

**OFFICE COPY**

Supreme Court, U.S.

**FILED**

**NOV 20 1971**

**E. ROBERT SEAVER, CLERK**

**APPENDIX**

**Supreme Court of the United States**

**OCTOBER TERM, 1971**

**No. 70-188**

**PECOLA ANNETTE, WRIGHT, ET AL.,  
PETITIONERS,**

**—v.—**

**COUNCIL OF THE CITY OF EMPORIA, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**CERTIORARI GRANTED OCTOBER 12, 1971**

**PETITION FOR WRIT OF CERTIORARI FILED MAY 20, 1971**

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Jury demand date:

On file:  
On motion:  
On presentation:

## TITLE OF CASE

J. S. 5

ATTORNEYS

For plaintiff: Tucker and Marsh

214 East Clay Street

S. D. TUCKER

HENRY L. MARSH

PEGOLA ANNETTE WRIGHT, LAVERNE WRIGHT,

JAMES E. WRIGHT JR., and COLA M. WRIGHT,

infants, by James E. Wright and Maggie Wright,  
their father and mother and next friends, et al

vs

COUNTY SCHOOL BOARD OF GREENSVILLE COUNTY, VA.

CARY P. FLYTHE, Dec'd.

ADOLPHUS G. SLATE

LANDON S. TEMPLE

J. B. ADAMS

ANDREW G. WRIGHT (no longer with School Board) and  
COUNCIL OF THE CITY OF EMPORIA

GEORGE W. LEE

S. G. KEEDWELL

L. R. BROTHERS, JR.

WILLIAM H. LIGON

JULIAN C. WATKINS

T. CATO TILLAR

M. L. NICHOLSON, JR.

FRED A. MORGAN

THE SCHOOL BOARD OF THE CITY OF EMPORIA

E. V. LANKFORD

JULIAN P. MITCHELL

P. C. TAYLOR

G. B. LIGON

For defendant:

Frederick T. Gray, Williams, Mullen  
Christian, State Planters Bank Bldg

John Kay, Jr. 647-0

D. Dortch Warriner, Penitentiary  
332 South Main Street, Emporia, Va

6-20-66 Plan approved - retained on dock

6-20-66 11-17-65 Plan approved

SCHOOL CASE

CLASS ACTION 18USC1331 - 14th

J.S. 5 mailed

J.S. 6 mailed

Basis of Action:

Action arose at:

STATISTICAL RECORD  
Amendment

Clerk

Marshal

Docket fee

Witness fees

Depositions

DATE  
NAME OR  
RECEIPT NO.

REC.

DISE

3-15-65

J.S. 5

15 00

3-16-65

J.S. 6

15 00

7-25-67

Not Appr'd

5 00

7-31-67

J.S. 5

5 00

11-24-67

J.S. 6

15 00

11-24-67

J.S. 6

15 00

3-20-70

Notice Appr'd

5 00

2-25-70

C.I.D. 45

5 00

PECOLA ANNETTE WRIGHT, LAVERNE WRIGHT,  
JAMES E. WRIGHT, JR., and COLA M. WRIGHT,  
infants, by James E. Wright and Maggie Wright,  
their father and mother and next friends, et al

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T. CATO TILLAR

M. L. NICHOLSON, JR.

FRED A. MORGAN

THE SCHOOL BOARD OF THE CITY OF EMPORIA

E. V. LANKFORD

JULIAN P. MITCHELL

P. C. TAYLOR

G. B. LIGON

For defendant:

Frederick T. Gray, Williams, Mullen  
Christian, State Planters Bank Bldg

*John Rapp, Jr.*  
649-3

D. Dortch Warriner, Receiver  
332 South Main Street, Emporia, V.

6-20-66 Plan approved - retained on dock

Consented 11-17-65. *B. B. B.*

SCHOOL CASE		STATISTICAL RECORD		CLASS ACTION 18USC1331 - 14th		Amendment		COSTS		NAME OR RECEIPT NO.		REC.		DATE		DISB	
J.S. 5 mailed				Clerk						3-15-65 27		15 00		3-15-65		15 00	
J.S. 6 mailed				Marshal						3-16-65 91047		5 00		3-16-65		15 00	
Basis of Action:				Docket fee						7-25-67 Test Appeal		5 00		7-25-67		5 00	
Action arose at:				Witness fees						7-31-67 CID 5		5 00		7-31-67		5 00	
				Depositions						11-21-67 Deposition Rec		5 00		11-21-67		5 00	
										11-21-67 CID 26		5 00		11-21-67		5 00	
										3-20-70 Notice Appeal		5 00		3-20-70		5 00	
										2-25-70 CID 45		5 00		2-25-70		5 00	



No. 4263

DATE	PROCEEDINGS	DATE	Judge
March 12	Complaint filed summons issued.		
" 29	Marshal's return on summons as to all defts. executed and filed		
Apr. 5	Motion to dismiss filed by County School Board of Greenville Co. Va., Cary P. Flythe, Adolphus G. Slate, Landon S. Temple and J. R. Adams, ind. & as members of the County School Board and Andrew G. Wright, Div. Supt. of Schools of Greenville Co., Va. affirmed.		
May 3	Motion for consolidation of motion to dismiss with hearing on merits, for requirement of answer by defts and for fixing of trial date filed by pltf's.		
" 5	Order deferring ruling on motion to dismiss; directing Clerk to call case at next docket call, ent. 5-5-65. Copies mailed as directed.** Defts. to answer on or before 6-1-65.		
May 7	Interrogatories filed by plf.		
" 24	Order extending time to 6-8-65 for deft. School Board to file answers to interrogatories, ent. 5-24-65. Copies mailed counsel of record.		
June 1 ✓	Answer filed by defts.		
" 18	Answer of County School Board of Greenville Co., Va. to interrogatories, filed, with exhibits.		
Sept. 8	Deposition of Andrew Graham Wright, received		
Nov. 3	List of witnesses pltf's expect to call and list of exhibits pltf's, expect to introduce filed.		
Nov. 5	List of witnesses defts. expect to call and list of exhibits they expect to introduce filed		
" 9	Depositions of Wm. I. Reavis & H. E. Wright received		
" 16	Additional witness plfs. expect to call, filed.		
Nov. 17	TRIAL PROCEEDINGS: Butzner, J.: Appearances: Parties by counsel. Plaintiff adduced evidence. Plaintiff rests. Defendant adduced evidence, rested.		
	Each side to present briefs and conduct re-hearing case soon as possible at 11-17-65.		
Nov. 17	Plaintiff's statement of position and summary of facts filed in open court.		
" 18	Reporter's transcript of testimony of Dr. Bruce W. Welch filed.		
" 29	Reporter's transcript of proceedings of 11-17-65 filed.		
Dec. 1	Brief on behalf of defts. rec'd.		
Dec. 15	Brief for plaintiffs, received		
1966			
Jan. 19	Copy of letter from Acting U. S. Commissioner of Education announcing approval of Greenville County School plan by Department of Health, Education & Welfare, filed.		
Jan. 27	Memorandum of the Court filed		
" "	Order that defts motion to dismiss be denied; Pltfs. prayer for an injunction restraining school construction and the purchase of school sites denied		
	Defts. granted 90 days to submit amendments to their plan which will provide for employment and assignment of the staff on a non racial basis.		
	Pending receipt of these amendments, the Court will defer approval of the plan and consideration of other ya injunctive relief; Pltfs motion for counsel fees denied; Case to be retained on docket with leave granted to any party to petition for further relief; Pltfs shall recover their costs to date.		
	ent. & filed; Copies mailed as directed		
Apr. 27	Supplement Faculty plan filed		
May 4	TRIAL PROCEEDINGS-Butzner, J.: Parties appeared by counsel. Issues joined. Exceptions to plan supplement filed by plaintiffs. Case argued.		
	(see further proceedings at page 2)		

## PROCEEDINGS

DATE

1966

May 13

Memorandum of the court with appendix plan of the County School Board of Coochland County, Virginia, to desegregate its school faculties, attached, filed May 13, 1966.

May 13

Order granting defendants ten days to submit amendments to their plan which will provide for employment and assignment of the staff on a non-racial basis and deferring approval of plan and consideration of other injunctive relief, entered and filed May 13, 1966. (copies of memorandum and of the order delivered to counsel)

" 20

Motion for leave to file and request for approval of a plan supplement filed by County School Board of Greenville Co.  
IN OPEN COURT-Butzner, J.: Plan discussed by counsel. Court to approve Plan.

June 10

" 20

Memorandum of the Court filed.

" " "

Order approving plan adopted by Greenville County School Board; retaining case on docket, ent. 6-20-66. Copies mailed counsel.

J. 1968

June 21

Interrogatories filed by pltf.

" "

Notice of Motion filed by pltf.

" "

Motion for further relief filed by pltf.

July 3

Defts. response to interrogatories #1

" 8

Order that defts. file plan for desegregation on or before 9-8-68, ent. 7-8-68.

" 10

Copies mailed counsel.

Order vacating order of 7-8-68; defts. shall on or before 7-30-68 advise the court if they are in compliance with plan for desegregation of public school system as enunciated by U. S. Supreme Court in its decision of 5-27-68; if defts. cannot properly file report of compliance, they shall file on or before 8-9-68 a plan for desegregation of the public school system which they contend will bring them in compliance with the 5-27-68 decision aforesaid; plfs. shall file exceptions if any to any such plans within 3 days thereafter ent. 7-10-68. Copies mailed counsel.

" 22

Answers to interrogatories filed by

Aug. 8

Report and Motion filed by County School Board of Greenville Co., Va. by order of 7-10-68.

" 13

Exceptions to Report filed by plfs.

Aug. 14

IN OPEN COURT: Merhige, J. Appearances: Parties by counsel. Waived opening. Deft adduced evidence, rested. Plaintiff adduced no evidence. Case taken under

Sept. 16

advisement.

" 16

Report and Plan of County School Board of Greenville Co. and S. A. Owen,

" 14

Div. Supt. of Schools, rec'd and filed.

" 14

Pre-trial in open court-Merhige, J.

" 14

Order that Defts. granted until Jan. 20, 1969, to file plan; that said plfs.

" 14

file any exceptions which they may have to said plan, if any, within five days thereafter ent. 8 filed; copies mailed as directed.

" 14

Jan. 23

Motion for extension of time to Jan. 31, 1969 for filing plan for desegregation ordered filed by defts.

" 31

Report and Motion with proposed modifications of Freedom of choice plan (Exh. "A") filed by County School Board.

Feb. 11

Exceptions to report and motion filed by plfs.

Feb. 25

TRIAL PROCEEDINGS: Merhige, J. Appearances: Parties by counsel. Defendant adduced

" 25

evidence, rested. Defendant's plan "A" rejected pl. "A".



May 13 Order granting defendants ten days to submit amendments to their plan which will provide for employment and assignment of the staff on a non-racial basis and deferring approval of plan and consideration of other injunctive relief, entered and filed May 13, 1966. (copies of memorandum and of the order delivered to counsel)

" 20 Motion for leave to file and request for approval of a plan supplement filed by County School Board of Greenville Co.

June 10 IN OPEN COURT-Butzner, J.: Plan discussed by counsel. Court to approve Plan.

" 20 Memorandum of the Court filed.

" " Order approving plan adopted by Greenville County School Board; retaining case on docket, ent. 6-20-66. Copies mailed counsel.

J 1968

June 21 Interrogatories filed by pltf.

" " Notice of Motion filed by pltf.

" " Motion for further relief filed by pltf.

July 3 Defts. response to interrogatories; interrogatory #3 received & filed

" 8 Order that defts. file plan for desegregation on or before 9-8-68, ent. 7-8-68. Copies mailed counsel.

" 10 Order vacating order of 7-8-68; defts. shall on or before 7-30-68 advise the court if they are in compliance with plan for desegregation of public school system as enunciated by U. S. Supreme Court in its decision of 5-27-68; if defts. cannot properly file report of compliance, they shall file on or before 8-9-68 a plan for desegregation of the public school system which they contend will bring them in compliance with the 5-27-68 decision aforesaid; plfs. shall file exceptions if any to any such plans within 3 days thereafter ent. 7-10-68. Copies mailed counsel.

" 22 Answers to interrogatories filed by County School Board of Greenville Co., Va.

Aug. 8 Report and Motion filed by County School Board of Greenville Co., as directed by order of 7-10-68.

" 13 Exceptions to Report filed by plfs.

Aug. 14 IN OPEN COURT: Merhige, J. Appearances: Parties by counsel. Waived opening. Deft adduced evidence, rested, plaintiff adduced no evidence. Case taken under advisement.

Sept. 16 Report and Plan of County School Board of Greenville Co. and S. A. Oren, Div. Supt. of Schools, rec'd and filed.

Sep. 14 Pre-trial in open court-Merhige, J.

Dec. 4 Order that Defts. granted until Jan. 20, 1969, to file plan; that said pltfs. file any exceptions which they may have to said plan, if any, within five days thereafter ent. & filed; copies mailed as directed.

1969

Jan. 23 Motion for extension of time to Jan. 31, 1969 for filing plan for desegregation ordered filed by defts.

" 31 Report and Motion with proposed modifications of freedom of choice plan (Exh. "A") filed by County School Board.

Feb. 11 Exceptions to report and motion filed by plfs.

Feb. 25 TRIAL PROCEEDINGS: Merhige, J. Appearances: Parties by counsel. Defendant adduced evidence, rested. Defendant's plan "A" rejected. Plan "Alternate" taken under advisement. Case continued generally.

Mar. 18 Proposed Plan for Desegregation filed by plfs.

June 5 Order that all parties appear on 6-17-69 at 3 P. M., in person or by counsel, for purposes of considering defts' report and motion heretofore filed, as well as plfs' proposed plan for desegregation, ent. 6-5-69. Copies mailed counsel.



DATE	PROCEEDINGS	DATE
1969		July
June 23	TRIAL PROCEEDINGS: Marhige, J. Appearances: Parties by counsel. Opening statements. Defendant adduced evidence. Rested. Finding of fact and conclusions of law started from bench. Defendants plan as submitted is rejected, and Plaintiff's plan is to be put into effect.	
June 23	Minutes of the court filed.	
" 25	Order denying defts' proposed use of freedom of choice plan, etc; defts' proposed use of alternative plan set forth in Exhibit A is denied; enjoining defts. permanently, etc. to disestablish existing dual system of racially identifiable public schools being operated in Greenville Co., and to replace that system of schools with a unitary system; enjoining defts. mandatorily to take necessary steps to the end that proposed plan for desegregation filed by plfs. under date of 3-18-69 be put into effect commencing with the school term beginning in Sept. 1969; defts. to report to this court by no later than 8-15-69 their actions in compliance with this decree, etc., ent. 6-25-69. Copies mailed counsel of record and delivered to U. S. Marshal for service on each of the defendants herein.	
July 1	Marshal's return on above order executed, filed.	
" 23	Notice of Motion to amend judgment filed by defts.	
" "	Motion to amend judgment together with plan for operation filed by defts.	
July 25	NOTICE OF APPEAL filed by County School Board of Greenville County	
July 25	Undertaking on appeal filed	
July 31	TRIAL PROCEEDINGS: Marhige, J. Appearances: Parties by counsel. Arguments heard on proposed plan. Decision withheld.	
July 31	Minutes of court filed.	
Aug. 1	Notice to file supplemental complaint and for interlocutory injunction, filed by plfs.	
" "	Statement of Authorities filed by plfs.	
" "	Order filing supplemental complaint and directing copies with copy of original complaint, copy of court's order of 6-25-69 and this order be served by the U. S. Marshal on each of the defts.; said defts. to answer said supplemental complaint within 15 days after service thereof; plf's motion for interlocutory injunction is set for hearing on 8-8-69, at 10 A. M., ent. 8-1-69. Copies delivered to U. S. Marshal and mailed counsel.	
Aug. 1	Supplemental complaint filed.	
" 4	Marshal's return on supplemental complaint executed, filed.	
" 8	Motion for amendment of order rendered on July 31, 1969, filed.	
Aug 8	TRIAL PROCEEDINGS - Marhige, J. Appearances: Parties by counsel. Plaintiff adduced evidence, rested. Defendant adduced evidence, rested. FECL stated from the bench. Motion for interlocutory injunction granted. Case continued to December 18, 1969, for hearing on issuance of permanent injunction.	
Aug. 18	Findings of fact filed.	
" "	Order enjoining & restraining E. V. Lankford, Julian P. Mitchell, P. S. Taylor, G. B. Ligon, William H. Ligon, L. R. Brothers, Jr., T. Cato Tillar, Fred A. Morgan, Julian C. Watkins, S. G. Keedwell, M. L. Nicholson, Jr., Robert F. Hutcheson etc. from any action which would interfere in any manner whatsoever with the implementation of the Court's Order heretofore entered in reference to the operation of public schools for the student population of Greenville County & the City of Emporia; Order to be effective upon plts. giving security in sum of \$100.00 for payment of costs and damages & Order to remain in full force & effect for 140 days, unless sooner modified, enlarged or dissolved; denying motion for stay, Ent. & filed; Copies turned over to Marshal for service	

Defendants' proposed evidence. Roster. Finding of fact and conclusions of law stated from bench. Defendants plan as submitted is rejected, and Plaintiff's plan is to be put into effect.

June 23 Minutes of the court filed.

" 25 Order denying defts', proposed use of freedom of choice plan, etc.; defts' proposed use of alternative plan set forth in Exhibit A is denied; enjoining defts. permanently, etc. to disestablish existing dual system of racially identifiable public schools being operated in Greenville Co., and to replace that system of schools with a unitary system; enjoining defts. mandatorily to take necessary steps to the end that proposed plan for desegregation filed by plfs. under date of 3-18-69 be put into effect commencing with the school term beginning in Sept. 1969; defts. to report to this court by no later than 8-15-69 their actions in compliance with this decree, etc., ent. 6-25-69. Copies mailed counsel of record and delivered to U. S. Marshal for service on each of the defendants herein.

July 1 Marshal's return on above order executed, filed.

" 23 Notice of Motion to amend judgment filed by defts.

" Motion to amend judgment filed by defts.

July 25 NOTICE OF APPEAL filed by County School Board of Greenville County.

July 25 Undertaking on appeal filed

July 31 TRIAL PROCEEDINGS: Verhige, . . . Appearances: Parties by Counsel. Arguments heard on proposed plan. Decision withheld

July 31 Minutes of court filed.

Aug. 1 Notice to file supplemental complaint and for interlocutory injunction, filed by plfs.

" " Statement of Authorities filed

" " Order filing supplemental complaint and directing copies with copy of original complaint, copy of court's order of 6-25-69 and this order be served by the U. S. Marshal on each of the defts.; said defts. to answer said supplemental complaint within 15 days after service thereof; plf's motion for interlocutory injunction is set for hearing on 8-8-69, at 10 A. M., ent. 8-1-69. Copies delivered to U. S. Marshal and mailed counsel.

Aug. 1 Supplemental complaint filed.

" 4 Marshal's return on supplemental complaint executed, filed.

" 8 Motion for amendment of order rendered on July 31, 1969, filed.

Aug 8 TRIAL PROCEEDINGS - Verhige, J. Appearances: Parties by counsel. Plaintiff adduced evidence, rested. Defendant adduced evidence, rested. FECL stated from the bench. Motion for interlocutory injunction granted. Case continued to December 18, 1969, for hearing on issuance of permanent injunction.

Aug. 18 Findings of fact filed

" " Order enjoining & restraining E. V. Lankford, Julian P. Mitchell, P. S. Taylor, G. B. Ligon, William H. Ligon, L. R. Brothers, Jr., T. Gato Tillar, Fred A. Morgan, Julian C. Watkins, S. G. Keedwell, N. L. Nicholson, Jr., Robert F. Hutcheson etc. from any action which would interfere in any manner whatsoever with the implementation of the Court's Order heretofore entered in reference to the operation of public schools for the student population of Greenville County & the City of Emporia; Order to be effective upon pltf's giving security in sum of \$100.00 for payment of costs and damages & Order to remain in full force & effect for 140 days, unless sooner modified, enlarged or dissolved; denying motion for stay. Ent. & filed; Copies turned over to Marshal for service

Aug. 15 Answer of defts. filed

Aug. 26 ORDER extending time full 90 days for docketing appeal, ent. & filed

Aug. 26, 1969. Clerk mailed copies to counsel and to reporter

(SEE FURTHER PROCEEDINGS AT PAGE 4)



DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN ENCLUMES RETURN
		PLAINTIFF	DEFENDANT	
Oct. 9	Notice of Motion & Motion to dismiss supplemental complaint filed by defts.			
" "	Statement of authorities filed by defts.			
Oct. 17	IN OPEN COURT: Wernicke, Jr. Appearance: Parties by counsel.			
	Motion to dismiss supplemental complaint, argued.			
	Taken under advisement.			
Oct. 17	Minutes of the court filed.			
Oct. 20	Order denying motion to dismiss and dismissing supplemental complaint filed herein on the grounds that the Court lacked jurisdiction. Copies mailed as directed, to counsel of record.			
Oct. 22	ORDER extending time for docketing appeal to Nov. 24, 1969, entered by U S Court of Appeals Oct. 21, 1969, rev'd & filed Oct. 22, 1969			
Oct. 24	Motion to retain part of record in District Court pending appeal filed by defts.			
Oct. 27	ORDER that clerk is directed to retain in this Court the following parts of record, subject to the request of the Court of Appeals:			
	1. Pltff's. Notice of motion to file supplemental complaint; to add parties deft.; and for an interlocutory injunction filed Aug. 1, 1969;			
	2. Plaintiff's. statement of authorities, Filed Aug. 1, 1969.			
	3. Pltff's. supplemental complaint filed Aug. 1, 1969.			
	4. Findings of fact & conclusions of law, filed Aug. 8, 1969			
	5. ORDER granting temporary injunction, filed Aug. 8, 1969			
	6. Answer of deft's. , Council of the City of Emporia and its members & School Board of the City of Emporia & its members, filed Aug. 14, 1969.			
	7. Notice of motion and motion of deft's., Council of the City of Emporia & School Board of the City of Emporia & its members to dismiss supplemental complaint, filed Oct. 8, 1969.			
	8. ORDER denying deft's. motion, filed Oct. 21, 1969			
	9. Motion of deft's., Council of the City of Emporia and its members & School Board of the City of Emporia & its members to retain part of record in District Court pending appeal.			
	10. Any other pleadings, orders, or documents relating to the proceedings on pltff's. supplemental complaint, including transcripts.			
	FURTHER ORDERED that clerk shall transmit copy of this ORDER to USCA for the Fourth Circuit ent. & filed; Notice to counsel			
Nov. 19	Original and one copy of Reporters Transcript dated Feb. 25, 1969, filed			



Statement of authorities filed by defts.

Oct 17 IN OPEN COURT: Marhiga, Jr. Appearance: Parties by counsel.

Motion to dismiss supplemental complaint, argued.

Taken under advisement.

Oct 17 Minutes of the court filed.

Oct. 20 Order denying motion to dismiss and dismissing supplemental complaint

filed herein on the grounds that the Court lacked jurisdiction. Copies mailed as directed, to counsel of record.

Oct 22 ORDER extending time for docketing appeal to Nov. 24, 1969, entered by U S Court of Appeals Oct. 21, 1969, rcvd & filed Oct. 22, 1969

Oct. 24 Motion to retain part of record in District Court pending appeal filed by defts.

Oct. 27 ORDER that clerk is directed to retain in this Court the following parts of record, subject to the request of the Court of Appeals:

1. Pltff's. Notice of motion to file supplemental complaint; to add parties deft.; and for an interlocutory injunction filed Aug. 1, 1969;

2. Plaintiff's. statement of authorities, Filed Aug. 1, 1969.

3. Pltff's. supplemental complaint filed Aug. 1, 1969

4. Findings or fact & conclusions of law, filed Aug. 8, 1969

5. ORDER granting temporary injunction, filed Aug. 8, 1969

6. Answer of deft's. Council of the City of Emporia and its members & School Board of the City of Emporia & its members, filed Aug. 14, 1969.

7. Notice of motion and motion of deft's., Council of the City of Emporia & School Board of the City of Emporia & its members to dismiss supplemental complaint, filed Oct. 8, 1969.

8. ORDER denying deft's. motion, filed Oct. 21, 1969

9. Motion of deft's., Council of the City of Emporia and its members & School Board of the City of Emporia & its members to retain part of record in District Court pending appeal.

10. Any other pleadings, orders, or documents relating to the proceedings on pltf's. supplemental complaint, including transcripts.

FURTHER ORDERED that clerk shall transmit copy of this ORDER to USCA for the Fourth Circuit ent. & filed; Notice to counsel

Nov. 19 Original and one copy of Reporters Transcript dated Feb. 25, 1969, filed

Nov. 19 Original and one copy of Reporters Transcript dated June 23, July 31, 1968, August 14, 1968 and Aug. 8, 1969, filed.

*see page 5*

1969	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
Nov. 19	APPEAL RECORD, Vols. I-VII and exhibits, delivered to Clerk, USCA. (see letter in case file)			
Dec. 3	Defendant's list of witnesses and exhibits, rec'd, filed.			
Dec. 18	TRIAL PROCEEDINGS: Merhege, J. Appearances: Parties by counsel. Plaintiff adduced evidence, rested. Defendant adduced evidence, rested. Arguments. Case taken under advisement by court.			
	Minutes of court filed.			
Dec 31	APPEAL RECORD VOLS 1-VII & exhibits rcvd from Clerk USCA			
Dec 31	Copy of order of USCA dismissing appeal, filed			
1970				
Jan. 23	Rebuttal Brief of Council and School Board of Emporia to Plaintiff's Memo filed by Torrich Warriner and John F. Kay, Jr. attys for defts.			
Mar 2	MEMORANDUM OPINION of the Court dated March 2, 1970, filed. Clerk mailed copies to counsel			
Mar 2	ORDER on memorandum of March 2, 1970, denying motion of the defendants, Council of the City of Emporia and the members thereof, and the School Board of the City of Emporia and the members thereof, and the dissolve the Court's injunction heretofore entered on Aug. 3, 1969, and decreeing that said order shall remain in full force and effect until further order; denying motion of the defendant School Board of the City of Emporia to modify the decree of this Court entered on June 23, 1969, as modified on July 30, 1969, and			
	1970. Clerk mailed copies to counsel			
Mar 19	NOTICE OF APPEAL from order entered on March 2, 1970 filed by defendants, Council of the City of Emporia and the members thereof and the School Board of the City of Emporia and the members thereof. Notice under Local Rule 31 issued by clerk.			
Mar 19	Appeal undertaking \$230 filed			
March 20	Designation of Parts of Transcript to be included in Record and Statement of Issues filed by deft.			
March 24	ORDER- that entire proceedings held on 8/8/69 & 12/18/69 except opening statements & closing arguments by counsel be transcribed for the appeal filed by defts, ent. 3/24/70 and filed. Copy deliver to Court reporter, & mailed to attys.			
Apr 7	Reporter's transcript of hearing on Dec. 18, 1969, filed Mar. 2, 1970			



Dec. 18	TRIAL PROCEEDINGS: Merhege, J. Appearances: Parties by counsel. Plaintiff adduced evidence, rested. Defendant adduced evidence, rested. Arguments. Case taken under advisement by court.
	Minutes of court filed.
Dec 31	APPEAL RECORD VOLS 1-VII & exhibits rcvd from Clerk USCA
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1970	
Jan. 23	Rebuttal Brief of Council and School Board of Emporia to Plaintiff's Memo filed by
	Dorlach Warriner and John F. Kay, Jr. attys for defts.
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	JUNE 11, 1970, as modified on July 20, 1970.
	1970. Clerk mailed copies to counsel
Mar 19	NOTICE OF APPEAL from order entered on March 2, 1970 filed by defendants, Council of the City of Emporia and the members thereof and the School Board of the City of Emporia and the members thereof. Notice under Local Rule 31 issued by clerk.
Mar 19	Appeal undertaking \$250 filed
March 20	Designation of Parts of Transcript to be included in Record and Statement of Issues filed by deft.
March 24	ORDER- that entire proceedings held on 8/8/69 & 12/18/69 except opening statements & closing arguments by counsel be transcribed for the appeal filed by defts. ent. 3/24/70 and filed. Copy deliver to Court reporter. & mailed to attys.
Apr 7	Reporter's transcript of hearing on Dec. 18, 1969, filed Mar. 2, 1970





1a

**Docket Entries**

**Complaint**

[filed March 15, 1965]

**IN THE UNITED STATES DISTRICT COURT****FOR THE EASTERN DISTRICT OF VIRGINIA****Richmond Division****CIVIL ACTION No. 4263**

---

PECOLA ANNETTE WRIGHT, LAVERNE WRIGHT, JAMES E. WRIGHT, JR., and COLA M. WRIGHT, infants, by James E. Wright and Maggie Wright, their father and mother and next friends, *et al.*,

*Plaintiffs,*

vs.

COUNTY SCHOOL BOARD  
OF GREENSVILLE COUNTY, VIRGINIA, *et al.*,

*Defendants.*

---

**I.**

1. (a) Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331. This action arises under the Fourteenth Amendment to the Constitution of the United States, Section 1, and under Title 42, United States Code, Section 1981, as hereafter more fully appears. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand Dollars (\$10,000.00).

(b) Jurisdiction is further invoked under Title 28, United States Code, Section 1343(3). This action is authorized by Title 42, United States Code, Section 1983 to be commenced.

### Complaint

by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States and by Title 42, United States Code, Section 1981, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States, as hereafter more fully appears.

## II

2. Infant plaintiffs are Negroes, are citizens of the United States and of the Commonwealth of Virginia, and are residents of and domiciled in the political subdivision of Virginia for which the defendant school board maintains and operates public schools. Said infants are within the age limits or will be within the age limits to attend, and possess or upon reaching such age limit will possess all qualifications and satisfy all requirements for admission to, said public schools.

3. Adult plaintiffs are Negroes, are citizens of the United States and are residents and taxpayers of and domiciled in the Commonwealth of Virginia and the above mentioned political subdivision thereof. Each adult plaintiff who is named in the caption as next friend of one or more of the infant plaintiffs is a parent, guardian or person standing in *loco parentis* of the infant or infants indicated.

4. The infant plaintiffs and their parents, guardians and persons standing in *loco parentis* bring this action in their own behalf and, there being common questions of law and fact affecting the rights of all other Negro children attend-

### *Complaint.*

ing public schools in the Commonwealth of Virginia and, particularly, in the said political subdivision, similarly situated and affected with reference to the matters here involved, who are so numerous as to make it impracticable to bring all before the Court, and a common relief being sought as will hereinafter more fully appear, the infant plaintiffs and their parents, guardians and persons standing in *loco parentis* also bring this action, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, as a class action on behalf of all other Negro children attending or who hereafter will attend public schools in the Commonwealth of Virginia and, particularly, in said political subdivision and the parents and guardians of such children similarly situated and affected with reference to the matters here involved.

5. Further, the adult plaintiffs bring this action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure as a class action on behalf of those of the citizens and taxpayers of said political subdivision who are Negroes; the tax raised contribution of persons of that class toward the establishment, operation and maintenance of the schools controlled by the defendant school board being in excess of \$10,000.00: The interests of said class are adequately represented by the plaintiffs.

### III

6. The Commonwealth of Virginia has declared public education a state function. The Constitution of Virginia, Article IX, Section 129, provides:

“Free schools to be maintained. The General Assembly shall establish and maintain an efficient system of public free schools throughout the State.”



### *Complaint*

Pursuant to this mandate, the General Assembly of Virginia has established a system of public free schools in the Commonwealth of Virginia according to a plan set out in Title 22, Chapters 1 to 15, inclusive, of the Code of Virginia, 1950. The establishment, maintenance and administration of the public school system of Virginia is vested in a State Board of Education, a Superintendent of Public Instruction, Division Superintendents of Schools, and County, City and Town School Boards (Constitution of Virginia, Article IX, Sections 130-133; Code of Virginia, 1950, Title 22, Chapter 1, Section 22-2).

### IV

7. The defendant School Board exists pursuant to the Constitution and laws of the Commonwealth of Virginia as an administrative department of the Commonwealth, discharging governmental functions, and is declared by law to be a body corporate. Said School Board is empowered and required to establish, maintain, control and supervise an efficient system of public free schools in said political subdivision, to provide suitable and proper school buildings, furniture and equipment, and to maintain, manage and control the same, to determine the studies to be pursued and the methods of teaching, to make local regulations for the conduct of the schools and for the proper discipline of students, to employ teachers, to provide for the transportation of pupils, to enforce the school laws, and to perform numerous other duties, activities and functions essential to the establishment, maintenance and operation of the public free schools in said political subdivision. (Constitution of Virginia, Article IX, Section 133; Code of Virginia, 1950, as amended, Title 22.) The names of the individual members of the defendant School Board are as stated in the caption

*Complaint*

and they are made defendants herein in their individual capacities.

8. The defendant Division Superintendent of Schools, whose name as such is stated in the caption, holds office pursuant to the Constitution and laws of the Commonwealth of Virginia as an administrative officer of the public free school system of Virginia. (Constitution of Virginia, Article IX, Section 133; Code of Virginia, 1950, as amended, Title 22.) He is under the authority, supervision and control of, and acts pursuant to the orders, policies, practices, customs and usages of the defendant School Board. He is made a defendant herein as an individual and in his official capacity.

9. A Virginia statute, known as the Pupil Placement Act, first enacted as Chapter 70 of the Acts of the 1956 Extra Session of the General Assembly, viz, Article 1.1 of Chapter 12 of Title 22 (Sections 22-232.1 through 22-232.17) of the Code of Virginia, 1950, as amended, confers or purports to confer upon the Pupil Placement Board all power of enrollment or placement of pupils in the public schools in Virginia and to charge said Pupil Placement Board to perform numerous duties, activities and functions pertaining to the enrollment or placement of pupils in, and the determination of school attendance districts for, such public schools, except in those counties, cities or towns which elect to be bound by the provisions of Article 1.2 of Chapter 12 of Title 22 (Sections 22-232.18 through 22-232.31) of the Code of Virginia, 1950, as amended.

10. Plaintiffs are informed and believe that in executing its power or purported power of enrollment or placement of pupils in and determination of school districts for the public schools of said political subdivision, the Pupil Place-

*Complaint*

ment Board will follow and approve the recommendations of the defendant School Board unless it appears that such recommendation would deny the application of a Negro parent for the assignment of his child to a school attended by similarly situated white children.

11. The procedures provided by the Pupil Placement Act do not provide an adequate means by which the plaintiffs may obtain the relief here sought.

## V

12. Notwithstanding the holding and admonitions in *Brown v. Board of Education*, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), the defendant School Board maintains and operates a biracial school system in which certain schools are designated for Negro students only and are staffed by Negro personnel and none other, and certain schools are designated for white students or primarily for white students and are staffed by white personnel and none other. This pattern continues unaffected except in the few instances, if any there are, in which individual Negroes have sought and obtained admission to one or more of the schools designated for white students. The defendants have not devoted efforts toward initiating nonsegregation in the public school system, neither have they made a reasonable start to effectuate a transition to a racially nondiscriminatory school system, as under paramount law it is their duty to do. Deliberately and purposefully, and solely because of race, the defendants continue to require or permit all or virtually all Negro public school children to attend schools where none but Negroes are enrolled and none but Negroes are employed as principal or teacher or administrative assistant and to require all white public school children to

### *Complaint*

attend school where no Negroes, or at best few Negroes, are enrolled and where no Negroes teach or serve as principal or administrative assistant.

13. Heretofore, petitions signed by several persons similarly situated and conditioned as are the plaintiffs with respect to race, citizenship, residence and status as taxpayers, were filed with the defendant School Board, asking the School Board to end racial segregation in the public school system and urging the Board to make announcement of its purpose to do so at its next regular meeting and promptly thereafter to adopt and publish a plan by which racial discrimination will be terminated with respect to administrative personnel, teachers, clerical, custodial and other employees, transportation and other facilities, and the assignment of pupils to schools and classrooms.

14. Representatives of the plaintiff class forwarded said petitions to the defendant School Board with a letter, copy of which was sent to each member of the defendant School Board, part of which is next set forth:

“ \* \* \* In the light of the following and other court decisions, your duty [to promptly end racial segregation in the public school system] is no longer open to question:

*Brown v. Bd. of Education*, 347 U.S. 483 (1954);

*Brown v. Bd. of Education*, 349 U.S. 294 (1955);

*Cooper v. Aaron*, 358 U.S. 1 (1958);

*Bradley v. School Bd. of the City of Richmond*,  
317 F.2d 429 (4th Cir. 1963);

*Bell v. Co. School Bd. of Powhatan Co.*, 321 F.2d  
494 (4th Cir. 1963).



### Complaint

"We call to your attention the fact that in the last cited case the unyielding refusal of the County School Board of Powhatan County, Virginia, to take any initiative with regard to its duty to desegregate schools resulted in the board's being required to pay costs of litigation including compensation to the attorneys for the Negro school children and their parents. We are advised that upon a showing of a deliberate refusal of individual school board members to perform their clear duty to desegregate schools, the courts may require them as individuals to bear the expense of the litigation.

"In the case of *Watson v. City of Memphis*, 373 U.S. 526 (1963) the Supreme Court of the United States expressed its unanimous dissatisfaction with the slothfulness which has followed its 1955 mandate in *Brown v. Board of Education*, saying: 'The basic guaranties of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled.'"

15. More than two regular meetings of the defendant School Board have been held since it received the petitions and letter above referred to. Neither by word or deed has the defendant School Board indicated its willingness to end racial segregation in its public school system.

### VI

16. In the following and other particulars, plaintiffs suffer and will continue to suffer irreparable injury as a result of the persistent failure and refusal of the defendants to initiate desegregation and to adopt and implement a plan providing for the elimination of racial discrimination in the public school system.

*Complaint*

17. Negro public school children are yet being educated in inherently unequal separate educational facilities specially sited, built, equipped and staffed as Negro schools, in violation of their liberty and of their right to equal protection of the laws.

18. Negro adult citizens are yet being taxed for the support and maintenance of a biracial school system the very existence of which connotes a degrading classification of the citizenship status of persons of the Negro race, in violation of the Fourteenth Amendment to the Constitution.

19. Public funds are being spent and will be spent by the defendants for the erection of schools and additions to schools deliberately planned and sited so as to insure or facilitate the continued separation of Negro children in the public school system from others of similar age and qualification solely because of their race, contrary to the provisions of the Fourteenth Amendment which forbid governmental agencies, whether acting ingeniously or ingenuously, to make any distinctions between citizens based on race.

20. This action has been necessitated by reason of the failure and refusal of the individual members of the defendant School Board to execute and perform their official duty, which since May 31, 1955 has been clear, to initiate desegregation and to make and execute plans to bring about the elimination of racial discrimination in the public school system.

**VII**

**WHEREFORE, plaintiffs respectfully pray:**

A. That the defendants be restrained and enjoined from failing and refusing to adopt and forthwith implement a



*Complaint*

plan which will provide for the prompt and efficient elimination of racial segregation in the public schools operated by the defendant School Board, including the elimination of any and all forms of racial discrimination with respect to administrative personnel, teachers, clerical, custodial and other employees, transportation and other facilities, and the assignment of pupils to schools and classrooms.

B. That pending the Court's approval of such plan the defendants be enjoined and restrained from initiating or proceeding further with the construction of any school building or of any addition to an existing school building or the purchase of land for either purpose to any extent not previously approved by the Court.

C. That the defendants pay the costs of this action including fees for the plaintiffs' attorneys in such amounts as to the Court may appear reasonable and proper and that the plaintiffs have such other and further relief as may be just.

S. W. TUCKER  
*Of Counsel for Plaintiffs*

S. W. TUCKER  
HENRY L. MARSH, III  
WILLARD H. DOUGLAS, JR.  
214 East Clay Street  
Richmond, Virginia 23219

JACK GREENBERG  
JAMES M. NABBIT, III  
10 Columbus Circle, Suite 2030  
New York, New York 10019

**Answer**

[filed June 1, 1965]

**IN THE UNITED STATES DISTRICT COURT****FOR THE EASTERN DISTRICT OF VIRGINIA****Richmond Division**

The undersigned defendants for Answer to the Complaint exhibited against them say as follows:

1. These defendants deny that the amount in controversy herein exceeds the sum of Ten Thousand Dollars (\$10,000.00) as alleged in paragraph 1 (a) of the Complaint.

2. These defendants deny that this Court has jurisdiction under Title 28, United States Code, Section 1331 or Title 28, United States Code, Section 1343(3) or Title 42, United States Code, Section 1983 to grant any of the relief prayed for in the Complaint.

3. The allegations of paragraphs 2 and 3 of the Complaint are neither admitted or denied but the defendants believe the allegations to be essentially true.

4. These defendants specifically deny that there are questions of law and fact *affecting the rights of all other Negro children attending public schools in the said political subdivision* and call for strict proof thereof and of the fact that it is impracticable to bring all before the Court who desire the relief being sought. These defendants affirmatively allege that, as will hereinafter more fully appear, the Constitutional and statutory rights of all children in the said political subdivision, in so far as public schools

*Answer*

are concerned, are protected by the defendants and the desire for the relief being sought is common only to the named plaintiffs.

5. These defendants deny that grounds for a class action exist as alleged in paragraph 5 of the Complaint and deny that those constituting the group seeking relief herein contributed taxes in excess of \$10,000.00 and call for strict proof.

6. The allegations of paragraphs 6, 7, 8 and 9 of the Complaint are admitted insofar as they assert the existence of various Constitutional and statutory provisions of the Commonwealth of Virginia. These defendants are not required and therefore do not admit or deny the accuracy of the plaintiffs' interpretation of the provisions of law to which reference is made.

7. These defendants believe the allegations of paragraph 10 to be correct except that they believe that the Pupil Placement Board would refuse to follow any recommendations which denied an application due to the race of the applicant whether the applicant be Negro or white.

8. These defendants, in answer to paragraph 11 of the Complaint, assert that the assignment procedures available to the plaintiffs afford an adequate means for obtaining all rights to which they are entitled.

9. The allegations of paragraphs 12, 13, 14, 15, 16, 17, 18, 19 and 20 are denied except that the defendants admit having received the petition and letter referred to in paragraphs 13 and 14.



*Answer.*

10. Infant plaintiffs and all others eligible to enroll in the pupil schools in the political subdivision are permitted, under existing policy, to attend the school of their choice without regard to race subject only to limitations of space.

WHEREFORE, defendants pray to be dismissed with their costs.

COUNTY SCHOOL BOARD OF GREENSVILLE  
COUNTY, VIRGINIA

CARY P. FLYTHE  
ADOLPHUS G. SLATE  
LONDON S. TEMPLE  
J. B. ADAMS

Individually and as members  
of the County School Board of  
Greensville County, Virginia

ANDREW G. WRIGHT,  
Division Superintendent of  
Schools of Greensville County,  
Virginia

By: FREDERICK T. GRAY  
Of Counsel

H. Benjamin Vincent  
Emporia, Virginia

Frederick T. Gray  
Williams, Mullen & Christian  
1309 State-Planters Bank Building  
Richmond, Virginia

[Certificate of Service Omitted in Printing]

**Memorandum of the District Court**

[filed January 27, 1966]

The infant plaintiffs, as pupils or prospective pupils in the public schools of Greenville County, and their parents or guardians have brought this class action asking that the defendants be required to adopt and implement a plan which will provide for the prompt and efficient racial desegregation of the county schools, and that the defendants be enjoined from building schools or additions and from purchasing school sites pending the court's approval of a plan. The plaintiffs also seek attorneys' fees and costs.

The defendants have moved to dismiss on the ground that the complaint fails to state a claim upon which relief can be granted. They have also answered denying the material allegations of the bill.

Greenville County is a rural county located on the North Carolina line. Approximately 4,500 pupils attend county schools, about 2,700 are Negro and 1,800 are white. Its school board operates one white and four Negro elementary schools, and separate Negro and white high schools. Both white schools are located in Emporia, a town near the center of the county. Homes of Negro and white persons are scattered throughout the county.

Prior to September 1965, the county operated segregated schools based on a system of dual attendance areas. The white schools in Emporia served all white pupils in the county. The four Negro elementary schools were geographically zoned, and the Negro high school served all Negro pupils in the county.

Until April 1965 the county operated under the Virginia Pupil Placement Act, §§ 22—232.1, *et seq.*, Code of Vir-

*Memorandum of the District Court*

ginia, 1950, as amended. During that time only one Negro applied for admission to a white school, and she withdrew her application.

In April 1964 Negro citizens petitioned the school board to adopt a plan to desegregate the schools. The board did not comply with their request, and this suit was filed on March 15, 1965.

On April 21, 1965 the school board adopted a plan to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000.d-1, *et seq.* This plan has been amended several times. It was approved by the United States Commissioner of Education on January 12, 1966 after the hearing in this case.

In September 1965, 72 Negro pupils were transferred, upon their applications, to white schools—35 to Emporia Elementary School and 37 to the high school. One or more Negro pupils are in every grade from the first through the tenth.

There are no white teachers in the Negro schools and no Negro teachers in the white schools. The board has held integrated faculty meetings. Last summer an integrated faculty conducted a "Head Start" program in a Negro school, which was attended by 97 Negro children.

The Greenville County plan provides:

"The Greenville County School Board has adopted a policy of complete freedom of choice to be offered annually in all grades of all schools without regard to race, color or national origin.

"SECTION I. ASSIGNMENT OF PUPILS

"A form letter will be sent home by every child containing provisions of the freedom of choice plan



*Memorandum of the District Court*

with a placement form at least 15 days before the date when the form must be returned. This procedure will be followed annually.

*"A. Pre-Registration of First Grade Pupils for Fall of 1966*

"Pre-registration of pupils planning to enroll in first grade for the fall 1966 semester will take place in all of the elementary schools on Friday, May 13. Under policies adopted by the Greenville County School Board parents or guardians may go directly to the school of their choice wherein they wish to send their child to school next year. At the time of pre-registration a choice may be expressed by filling in a Greenville County pupil placement form. The assignment will be made without regard to race, color, creed, or national origin. In the event of overcrowding preference will be given without regard to race to those choosing the school who reside closest to it. No choice submitted prior to the deadline will be rejected for any reason other than overcrowding of facilities.

"Pupils who fail to register on May 13 may be registered at the school of their choice on August 26th immediately prior to the opening of schools for the 1966 fall semester, but first preference in choice of schools will be given to those who pre-register in the spring period.

*"B. Pupils Entering Other Grades*

Each parent will be sent annually a letter, the text of which is attached, explaining the provisions of the plan, together with a choice of school form, the text

*Memorandum of the District Court*

of which is also attached, at least 15 days before the date when the choice form must be returned. Choice forms and letters to parents will also be readily available to parents or students in the school offices during regular business hours.

"The choice of school form must either be mailed or brought to the school or to the Superintendent's office within 15 days from the date the forms were initially sent home by that school. The annual date for sending these forms home shall be May 1st or the closest school day thereto. Anyone not registering his choice by that date must file his choice of school form at the time of registration when school opens. Pupils and their parents or guardians are required to exercise their choice of schools and no pupil will be admitted or readmitted to any school until such a choice has been made as herein specified.

"This choice is granted to parents, guardians and their children. Teachers, principals, and other school personnel are not permitted to advise, recommend or otherwise influence choices. They are not permitted to favor or penalize children because of choices.

*"C. Overcrowding*

All choices of pupils, their parents or guardians for every grade in the Greenville County School System will be subject to the following qualification:

"In the event, overcrowding of a school would result if all choices to attend that school were granted, priority shall be given without regard to race, color or national origin, and with no preference for previous attendance at the school, to those children choosing the

*Memorandum of the District Court*

school who reside closest to it. In the case of elementary schools those whose choices to attend a school are denied on this basis will be notified and permitted to make a choice of another formerly all white or all Negro school. In the case of high schools those whose choices to attend a school are denied on this basis will be assigned to the other school in the system at which the grade is taught. Otherwise, all choices will be granted; none will be denied for any reason other than overcrowding. The standards prescribed by the Virginia Department of Public Instruction as to overcrowding shall be used in determining [sic] whether overcrowding exists with respect to any application which is denied.

"D. Any newly enrolled pupil who moves into the county may secure placement forms from the principal of the school of their choice necessary to complete registration and enrollment. The same detailed instructions mentioned above regarding their right of free choice of schools will be furnished to them at this time.

"E. This system will not accept non-resident students, nor will it make arrangements for resident students to attend schools in other school systems, where either such action would tend to preserve segregation or minimize desegregation. Any arrangement made for non-resident students to attend schools of this system, or for resident students to attend schools in another system, will assure that such students will be assigned without regard to race, color or national origin, and such arrangement will be fully explained in attachment made a part of this plan.



*Memorandum of the District Court***"SECTION II. BUS ROUTES**

Transportation will be provided on an equal basis without segregation or other discrimination because of race, color or national origin. The right to attend any school in the system will not be denied because of lack of school system transportation from the pupils home to the school chosen and the pupil or his family may have to provide their transportation if the school system is not required to provide it under the next sentence of this paragraph. To the maximum extent feasible, buses will be routed so as to serve each pupil choosing any school in the system. In any event, every student eligible for bussing shall be transported to the school to which he is assigned as a provision of this plan if his first choice is either the formerly white or the formerly Negro school nearest his residence.

**"SECTION III. EXTRA-CURRICULAR ACTIVITIES, FACILITIES AND SERVICES**

There shall be no discrimination based on race, color, or national origin, with respect to any services, facilities, activities and programs sponsored by or affiliated with the schools of this system.

**"SECTION IV. STAFF DESEGREGATION**

A. The Greenville County School Board will assign all teachers on the basis of objective criteria such as certification, overall preparation and qualification for the position desired. In the case of each teacher employed by the school system in the 1964-65 school year who is not now employed, the race, color or national origin of such teacher was not a factor in the

*Memorandum of the District Court*

decision not to continue his or her employment. Steps shall be taken starting with the 1965-66 school year for the desegregation of faculty, at least including such actions as joint faculty meetings and joint in-service programs. Commencing immediately the following steps will be taken toward the elimination of segregation of teaching and staff personnel:

1. The pre-school in-service countywide teachers meetings will be held on a completely integrated basis.
2. All countywide staff meetings will be completely integrated.
3. All in-service classes will be open to all teachers regardless of race, color or national origin.

"B. This school system will not demote or refuse to re-employ principals, teachers, and other staff members who serve pupils on the basis of race, color or national origin. Any reduction in staff which may be required as a result of a decrease in enrollment will be accomplished without regard to race, color or national origin."

The school board has prefaced its plan by stating it has adopted a policy of complete freedom of choice for assignments.

Freedom of choice is a term frequently used when speaking of school desegregation. It has several meanings which should not be confused. It may refer to enrollment of pupils in segregated schools with the aid of state tuition grants in preference to attendance at public desegregated schools. See *Griffin v. School Board*, 377 U.S. 218, 222 (1964); Dure,

*Memorandum of the District Court*

*Individual Freedom versus "State Action,"* 38 Va. Q. Rev. 400 (1962); Dillard, *Freedom of Choice and Democratic Values*, 38 Va. Q. Rev. 410 (1962).

In its plan the county uses the phrase, "freedom of choice," in an entirely different context. It employs the term to describe its method of assigning pupils to the public schools. The phrase probably was adopted from, "A General Statement of Policies under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools," published by the Department of Health, Education and Welfare.

The term freedom of choice has been used to describe various methods of assigning pupils. One method initially assigns pupils on a racial basis and allows freedom of choice to transfer from the initial assignment. This system of assignment is not sanctioned in this Circuit. In *Bradley v. School Board of the City of Richmond, Va.*, 345 F.2d 310, 319 (4th Cir. 1965), *vacated and remanded on other grounds*, 34 U.S.L. Week 3170 (U.S. Nov. 15, 1965), Judge Haynsworth said:

"In this circuit, we do require the elimination of discrimination from initial assignments as a condition of approval of a free transfer plan."

Cf. *Bowditch v. Buncombe County Bd. of Educ.*, 345 F.2d 329 (4th Cir. 1965); *Nesbit v. Statesville City Bd. of Educ.*, 345 F.2d 333 (4th Cir. 1965); *Buckner v. County School Bd. of Greene County, Va.*, 332 F.2d 452 (4th Cir. 1964).

Freedom of choice also has been used to refer to a non-restrictive assignment system. Judge Haynsworth described this method of assignment in *Bradley v. School Bd. of the City of Richmond, Va.*, 345 F.2d 310, 314 (4th Cir.



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1965), *vacated and remanded on other grounds*, 34 U.S.L. Week 3170 (U.S. Nov. 15, 1965):

"[E]very pupil initially entering the Richmond school system, or his parents for him, is required to state his choice as to the school he wishes to attend. He is assigned to the school of his choice. Every pupil promoted from any elementary school in Richmond, or his parents for him, is required to make a similar choice, and he is assigned to the school of his choice, as are those promoted from junior high school to senior high school. Every other pupil is assigned to the school he previously attended, but he may apply for a transfer to any other school, and, since transfer requests are routinely granted without hearings or consideration of any limited criteria, he is assigned to the school of his choice."

The Richmond plan was approved tentatively in *Bradley*. The pupil assignment features of the Greenville County plan are similar in material respects to those found in the Richmond plan. Greenville County requires a mandatory choice to be made annually by both white and Negro pupils. In this respect it satisfies a more strict interpretation of the requirements of the Fourteenth Amendment than that which was applied to the Richmond plan. In *Bell v. School Board of the City of Staunton, Va.*, No. 65-C-H (W.D.Va., Jan. 5, 1966), Judge Michie disapproved a plan which did not contain a provision for annual mandatory choice in all grades.

The principal attack leveled by the plaintiffs against the plan is its failure to assign pupils on a geographical basis. They contend that a freedom of choice plan does not satisfy the school board's obligation to eliminate racial segregation from the school system.

*Memorandum of the District Court*

In this circuit both freedom of choice plans and geographical zoning plans have been found constitutional. *Bradley v. School Board of the City of Richmond, Va.*, 345 F.2d 310 (4th Cir. 1965) *vacated and remanded on other grounds*, 34 U.S.L. Week 3170 (U.S. Nov. 15, 1965) (freedom of choice plan); *Gilliam v. School Board of City of Hopewell, Va.*, 345 F.2d 325 (4th Cir. 1965) *vacated and remanded on other grounds*, 34 U.S.L. Week 3170 (U.S. Nov. 15, 1965) (geographical zoning plan).

The school authorities have the primary responsibility for initiating plans to achieve a lawful school system. *Brown v. Board of Education*, 349 U.S. 294, 299 (1955). This circuit has recognized that local authorities should be accorded considerable discretion in charting a route to a constitutionally adequate school system. Freedom of choice plans are not in themselves invalid. They may, however, be invalid because the "freedom of choice" is illusory. The plan must be tested not only by its provisions; but by the manner in which it operates to provide opportunities for a desegregated education. In this respect operation under the plan may show that the transportation policy or the capacity of the schools severely limits freedom of choice, although provisions concerning these phases are valid on their face. This plan, just as the Richmond plan approved in *Bradley*, is subject to review and modification in the light of its operation. Mr. Justice Stewart in *Abington School Dist. v. Schempp*, 374 U.S. 203, 317 (1963 (dissenting opinion) said:

"A segregated school system is not invalid because its operation is coercive; it is invalid simply because our Constitution presupposes that men are created equal, and that therefore racial differences cannot provide a valid basis for governmental action."

*Memorandum of the District Court*

The Court recognizes that great weight should be given the approval of the plan by the United States Commissioner of Education. *Singleton v. Jackson Municipal School Dist.*, 348 F.2d 729 (5th Cir. 1965). The plan also must be tested by pertinent court decisions. Some of these have been published since the plan was adopted. In general, the plan contains adequate provisions for transition of the Greenville County school system.

The plan, however, is defective in one respect. Its provisions for staff desegregation are too limited. A satisfactory freedom of choice plan must include provisions for the employment and assignment of staff on a non-racial basis. *Bradley v. School Board of the City of Richmond, Va.*, 34 U.S.L. Week 3170 (U.S. Nov. 15, 1965); *Rogers v. Paul*, 34 U.S.L. Week 3200 (U.S. Dec. 6, 1965); *Kier v. County School Bd. of Augusta County, Va.*, No. 65-C-5-H (W.D.Va. Jan. 5, 1966).

The primary responsibility for the selection of means to achieve employment and assignment of staff on a non-racial basis rests with the school board. Witnesses for the plaintiffs and the defendants were in general agreement about the steps that must be taken to satisfactorily resolve this problem. They were not in agreement on the time table for taking these steps. The time may vary from community to community. The court is of the opinion that in the first instance the board should have the opportunity to appraise realistically the time and methods required. Several principles must be observed by the board. Token assignments will not suffice. The elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date. The plan must contain well defined procedures which will be put into effect on definite dates. The board will be allowed ninety days to submit



*Memorandum of the District Court*

amendments to its plan dealing with staff employment and assignment practices.

The plaintiffs request that the defendants be restrained from proceeding with the construction of new school buildings and additions or purchasing new school sites until an adequate plan has been adopted. In their pre-trial brief, filed November 17, 1965, the plaintiffs urge that the court should require the school board to eliminate the segregated character of the school system by locating new schools in the system so as to promote integration. Little evidence was introduced concerning new construction. Apparently the school board plans to add additional classrooms to both high schools. It also plans to construct a Negro elementary school with fifteen classrooms to serve grades one through seven with a capacity for approximately 450 pupils. This construction is designed to rid a Negro school, known as the Greenville County Training School, of its outdated frame buildings.

This court is loathe to enjoin the construction of any schools. Virginia, in common with many other states, needs school facilities. New construction, however, cannot be used to perpetuate segregation. White pupils in the county have not transferred to Negro schools. Greenville County's recent experience shows that Negro pupils seek transfers to white schools. This could cause overcrowding of white schools coupled with vacancies in Negro schools. Denial of requests for transfers to white schools under these circumstances could require a geographical zoning plan or some other equitable means of assignment. The problem is recognized in *Wheeler v. Durham City Bd. of Educ.*, 346 F.2d 768, 774 (4th Cir. 1965), where Judge Boreman said:

"[4] From remarks of the trial judge appearing in the record, we think he was fully aware of the pos-

*Memorandum of the District Court*

sibility that a school construction program might be so directed as to perpetuate segregation. At the same time, he was reluctant to enter an order determining the location and size of new school facilities or what existing facilities should be enlarged. He clearly indicated his cognizance of the multitude of factors involved, such as the availability and cost of sites, the concentration of population, the present overcrowded conditions, etc. However, he was not unmindful of the responsibility of the Board in this area and he made known his conclusion that the burden would be on the Board to reasonably justify its actions and to demonstrate its good faith. Without specific or binding direction, the court expressed the hope that there would be some consultation between the parties to the litigation concerning the expansion program. The order last entered stated that the court has the assurance of the Board that its construction program would not be designed to perpetuate, maintain, or support desegregation. It has been held that a school construction program is an appropriate matter for court consideration. Conceivably the determination of the extent to which a busy court might or should undertake to formulate, direct, supervise, or police such a program would pose many problems. In view of the numerous factors involved in determining what, how, where and when new facilities are to be constructed or what old facilities may best be enlarged and renovated to meet pressing needs, the court's reluctance to issue a specific injunction is understandable, particularly since the Board was still subject to the provisions of the order of January 2, 1963, by which *any* and *all* acts that regulate or affect the assignment of pupils *on the basis of race or color* were enjoined."

*Memorandum of the District Court*

The primary responsibility concerning the selection of school sites and the construction of schools is the board's. This responsibility includes the obligation of not thwarting the county's freedom of choice plan by new construction.

The court concludes that new construction should not be enjoined. The evidence does not show that the plaintiffs will suffer irreparable harm. A new school building in itself cannot defeat the plaintiffs' choice of a desegregated education. The use, however, to which new facilities are put by the school board could cause a freedom of choice plan to become invalid. Then it will be necessary to modify the plan.

The plaintiffs' motion for the allowance of counsel fees will be denied. At the time the suit was filed no Negro pupils were being denied transfers to white schools. The case primarily involves a plan of desegregation. The situation is similar to that found in *Bradley v. School Board of the City of Richmond, Va.*, 345 F.2d 310, 321 (4th Cir. 1965) *vacated and remanded on other grounds*, 34 U.S.L. Week 3170 (U.S. Nov. 15, 1965), where counsel fees were not allowed for that part of the litigation pertaining to consideration of a plan.

The court concludes that defendant's motion to dismiss the complaint for failure to state a claim should be overruled. Cf. *Rogers v. Paul*, 34 U.S.L. Week 3200 (U.S. Dec. 6, 1965).

/s/ JOHN D. BUTZNER, JR.  
United States District Judge

January 27, 1966



**Order of District Court**

[filed January 27, 1966]

**ORDER**

For reasons stated in the Memorandum of the Court this day filed, it is ADJUDGED and ORDERED:

1. The defendants' motion to dismiss is denied;
2. The plaintiffs' prayer for an injunction restraining school construction and the purchase of school sites is denied;
3. The defendants are granted ninety (90) days to submit amendments to their plan, which will provide for employment and assignment of the staff on a non-racial basis. Pending receipt of these amendments, the court will defer approval of the plan and consideration of other injunctive relief;
4. The plaintiffs' motion for counsel fees is denied;
5. This case will be retained upon the docket with leave granted to any party to petition for further relief.

The plaintiffs shall recover their costs to date.

Let the Clerk send copies of this order and the Memorandum of the Court to counsel of record.

/s/ JOHN D. BUTZNER, JR.  
United States District Judge

January 27, 1966

**Excerpts from Minutes of Meeting of Board of,  
Supervisors of Greenville County, Virginia,  
November 27, 1967**

[Defendants' Exhibit E-A to District Court  
Proceedings of December 18, 1969]

Now, THEREFORE, be it resolved by the Board of Supervisors of Greenville County that:

1. The County of Greenville will not approve any joint operation of the county and city school systems.

**Minutes of Special Meeting of the Board of  
Supervisors of Greenville County,  
March 19, 1968**

[Defendants' Exhibit E-B to District Court  
Proceedings of December 18, 1969]

**"RESOLVED:**

That special counsel for the County, Robert C. Fitzgerald, is hereby authorized to submit to the City of Emporia or its counsel an agreement providing for the basis of services to be provided by the County to the citizens of the City and the payment therefor, together with other matters regarding transition in the form and words as approved by this Board this date.

Be it further resolved that upon agreement on the part of the Council of the City of Emporia and the School Boards of the City and County the Chairman and Clerk of this Board are hereby authorized to execute such agreement on behalf of the County of Greenville.

Be it further resolved that if this agreement is not agreed to and executed by all parties by April 30th, all services furnished by the county to the city not required by law shall terminate.

The above is excerpt taken from the minutes of the Board of Supervisors meeting held on 19th day of March, 1968.

A Copy

Teste:

Robert C. Wrenn, Clerk

By /s/ MARY D. LEE, Deputy Clerk

**Agreement Between City of Emporia  
and County of Greenville**

**Dated April 10, 1968**

**[Plaintiffs' Exhibit No. 7 to District  
Court Proceedings of August 8, 1969]**

**THIS AGREEMENT, made and entered into this 10th day  
of April, 1968, by and between:**

**The Council of the City of Emporia, Virginia, herein-  
after referred to as "the City," party of the first part; and**

**The Board of Supervisors of Greenville County, Vir-  
ginia, hereinafter referred to as "the County," party of the  
second part; and**

**The School Board of the City of Emporia, party of the  
third part; and**

**The School Board of the County of Greenville, party of  
the fourth part;**

**WHEREAS, on July 31, 1967, the Town of Emporia be-  
came a city of the second class by transition and thereby  
became obligated by law to provide public schools for chil-  
dren within its boundaries, to provide health and welfare  
services and the necessary facilities therefor, to the citizens  
of the City of Emporia, and**

**WHEREAS, the Code of Virginia, Section 15.1-1005 re-  
quires that the costs and expenses of the Circuit Court, the  
Clerk, the Commonwealth's Attorney, and the Sheriff of the  
County shall be determined and apportioned as provided by  
said Section, and**



*Agreement Between City of Emporia  
and County of Greenville*

WHEREAS, the County of Greenville has continued to provide the citizens of Emporia with said facilities and services, and the City of Emporia is obligated to compensate the County therefor.

WHEREAS, the County of Greenville is willing to continue to provide said facilities and services to the City of Emporia for the period hereafter provided conditioned on the City of Emporia paying to the County of Greenville a proportionate share of the cost of providing said facilities and services periodically as billed.

WITNESSETH: That for and in consideration of the promises set forth hereinabove and benefits to each party hereto, the City and County agree as follows:

1. That the County will continue to provide public schools, health and welfare services through its boards and departments and necessary facilities for such to the citizens of the City of Emporia in the same manner as when the City was a town and to the same extent as provided to the citizens of the County.

2. That the City will pay to the County as billed its proportionate share of the local cost of such services and the parties agree that the City's share is 34.26 percentum of the local cost of the County. In making such computation, all federal and state funds and other funds received by the County and the City applicable to such shared expenditures shall be taken into account; provided, however, the portion of the state sales and use tax distributable to the County and City under the provisions of 58-441.43 of the Code of Virginia, shall not be considered in making such

*Agreement Between City of Emporia  
and County of Greenville*

computation of local costs. Provided, however, that the City shall pay to the County 38 percentum of the debt service on the debt of the County existing on August 1, 1967, and the County agrees that if the City establishes a separate school system, that any amount paid by the City on the principal of such debt shall be credited to the City on the purchase price of any schools within the City purchased by the City.

3. The parties agree that the costs and expenses of the Circuit Court, the Clerk, Commonwealth's Attorney, and the Sheriff of the County shall be determined and apportioned as provided by Section 15.1-1005 of the Code of Virginia. The parties further agree that the City's share of such is 34.26 percentum.

4. The City agrees to pay promptly all accrued charges conforming to this Agreement and all future bills tendered by the County for services rendered in accordance with the terms of this Agreement within ten (10) days of receipt thereof. The City agrees that bills may be based on budget estimates provided that adjustment shall be made between the parties after the end of the fiscal year based on actual expenditures as shown by audit.

5. The City agrees that if any permanent improvements or additional facilities, including real property, buildings, and improvements used in providing such services to the City and County become necessary in the judgment of the County, that it will pay 34.26 per cent of the costs thereof or pay 34.26 per cent of the debt service on the costs thereof. It is agreed that the City will pay 34.26 per cent of the construction of the Training School located in the City.

*Agreement Between City of Emporia  
and County of Greenville*

6. It is further agreed that on any joint capital improvement or additional facilities, including real property and improvements, purchased or made by the City and County after the execution of this Agreement, that the equity of the City and County therein shall be in proportion to their respective contributions of 34.26 per cent and 65.74 per cent.

7. It is further agreed that the parties shall hold in abeyance further negotiation or action concerning the equities and ownership of all property belonging to the County or any agency or board thereof and all funds as of the date of the transition and the equities of each in said property and funds and the debt, if any to be assumed by the City, during the continuation of this Agreement or until notice of termination. The parties agree that any determination of such matters shall be governed by the law at the time of transition of Emporia to a city of the second class.

8. The City and County agree that the provisions of this Agreement concerning the furnishing of services and payment therefor shall remain in effect for a period of four (4) years and thereafter will continue until notice is given by either party to the other by December 1 of any year upon the condition that the notice of termination shall be for the termination of the Agreement on July 1 of the second year following the giving of said notice. The parties agree that should any territory of the County be annexed to the City during the life of this Agreement, that this Agreement shall terminate on the effective date of any such annexation unless this Agreement be modified by mutual agreement of the parties prior thereto.

*Agreement Between City of Emporia  
and County of Greenville*

9. The parties of the third and fourth parts join in this Agreement for the purpose of agreeing to the provisions hereof relating to school facilities and the operation of such.

IN WITNESS WHEREOF, the City of Emporia and the County of Greenville have caused this Agreement to be executed by their proper officers thereto duly authorized and their seals be affixed to this Agreement, which is executed in duplicate.



**Motion for Further Relief**

[filed June 21, 1968]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

The plaintiffs move that in the light of the opinion of the Supreme Court in *Green vs. County School Board of New Kent County, Virginia*, — U.S. —, 36 L.W. 4476 (No. 695 October Term 1967) decided May 27, 1968, the Court will reconsider its action herein and that thereupon the Court will require the defendant school board forthwith to put into effect a method of assigning children to public schools which will promptly and realistically convert the public schools within the jurisdiction of the defendants into a unitary non-racial system.

FURTHER, the plaintiffs move that the Court will award a reasonable fee for their counsel to be assessed as costs.

S. W. TUCKER

*Of Counsel for Plaintiffs*

S. W. TUCKER

HENRY L. MARSH, III

HILL, TUCKER &amp; MARSH

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New York, New York 10019

*Counsel for Plaintiffs*

[Certificate of Service Omitted in Printing]

**Report and Motion**

[filed January 31, 1969]

**IN THE UNITED STATES DISTRICT COURT****FOR THE EASTERN DISTRICT OF VIRGINIA****Richmond Division**

1. The County School Board of Greenville County, Virginia and S. A. Owen, Division Superintendent of schools, report that a thorough study of the school system has failed to alter their belief that continued operation of the freedom of choice plan, with the modifications set forth in Exhibit "A", would be in the best interest of all school age children in the county.

2. The County School Board of Greenville County, Virginia and S. A. Owen, Division Superintendent of schools, file herewith as Exhibit "A" a proposed alternative plan of reorganization of the public schools of Greenville County, which they regard as the most educationally acceptable alternative to freedom of choice.

WHEREFORE, the defendants move that the Court approve the continued use of the freedom of choice plan with the modifications set forth in Exhibit "A" or, in the alternative,

*Report and Motion*

that the Court approve the proposed alternative plan set forth in Exhibit "A".

Respectfully submitted,

COUNTY SCHOOL BOARD OF  
GREENSVILLE COUNTY  
FREDERICK T. GRAY

*Of Counsel*

Frederick T. Gray  
Williams, Mullen and Christian  
State Planters Bank Building  
Richmond, Virginia 23219

[Certificate of Service Omitted in Printing]

**Exhibit "A"****PROPOSED MODIFICATIONS OF FREEDOM OF CHOICE PLAN**

As ordered by the Federal District Court, the Greenville County School Board has to the best of its ability studied its school needs and hereby states its intention to offer an educational program of the highest quality to every school child in its system.

During the time allotted to devise a plan of compliance with the above mentioned order, the administration, as directed by the School Board, has sought the advice of many individuals and agencies it felt were competent in dealing with matters of this nature.

Representatives of the Department of Health, Education and Welfare at both the State and National level offered suggestions. Consultants from several colleges and universities, well versed in these areas, have devoted their time and talents to help visualize more fully a program of study. School administrators in other school divisions have been most cooperative in pointing out pitfalls to be avoided in situations of this type; and specialists in various phases of curriculum representing the Virginia State Department of Education, have made worthwhile contributions to help devise a plan which would be educationally sound.

Locally each teaching vacancy which has occurred since August, 1968, has been filled with a person of a minority race with regards to the faculty and student body at the school to which assigned. In-service education classes have been established on a racially integrated basis to help teachers prepare themselves to work with students with different ethnic backgrounds.

Through all of the above, the main objective has been to plan for an educational program which best meets the needs



*Exhibit "A"*

of the youngsters of the Greenville County School System, and, at the same time, comply with the directives of the Federal District Court.

Additional plans call for consultation with industrial leaders, employment agencies, and civic leaders at various levels to better ascertain possible specifics of the best program to offer. To date these studies are incomplete.

At the outset, the Board wishes to affirm that the facts of this study clearly indicate that the freedom of choice plan presently in use is the only plan by which it can achieve the best possible educational results for all children regardless of race, color or national origin. Under this plan no child has been denied the right to attend the school of his choice. School records show the increasing use of interracial faculty in the school system. The high morale of the school administration, faculty, and students makes possible the excellent spirit of cooperation in existence under the freedom of choice plan.

To abandon this plan would inevitably thwart the efforts and achievements of the entire school community. In addition, students forced to leave the school of their choice would find themselves robbed of the positions and honors they had earned at their former schools.

The freedom of choice plan has produced a situation which involves peaceful integration involving more Negroes than the number in most of the Virginia counties that are totally integrated but which have a very small Negro enrollment.

In seeking to comply in the best way possible with the federal injunction, the Greenville County School Board petitions to continue its freedom of choice school plan with the following revision:

*Exhibit "A"*

1. That the school administrators and faculty members be permitted to counsel children and parents regarding choice of schools.

2. If substantial desegregation does not occur at the elementary level as a result of freedom of choice children will be assigned to take special classes in schools in which they will be in the racial minority. Transportation will be provided.

3. Courses offered at the two high schools will be varied to such extent that numerous students will be required to attend both facilities to obtain the courses desired.

4. Faculties will be reassigned so that there will be no less than 25% of either the white or the Negro race on the faculty of any school.

**PROPOSED ALTERNATIVE PLAN**

Many plans or reorganization have been considered by the Greenville County School Board and each plan which was in compliance with the Court directive had features which were educationally unsound.

However, as it was ordered to do, the Greenville County School Board has devised a plan of school reorganization which the board does not recommend over the freedom of choice plan for the reasons previously stated. If ordered to do so, however, the board will attempt to the best of its ability to administer the plan herewith presented.

**HIGH SCHOOLS**

The faculty at each high school will be reassigned in such manner that there will be no less than 25% of either the white or the Negro race on the faculty of either school.

*Exhibit "A"*

The Division Superintendent has made a detailed study of the geographical school area, the county school plant and physical facilities, the teaching and administrative personnel, and the students in the school system. Students have been or are being tested to determine the level of their intellectual ability and achievement. On the basis of this study, it has been determined that reorganization can best be accomplished by the assignment of each high school student to one of the two buildings in our system that are designed for high school curriculum offerings. This assignment will be made solely on the basis of what curriculum each student is pursuing; it will provide an equal opportunity to all school children without regard to race, color, or national origin.

The high school program will include a broad choice of curriculum offerings including college preparatory, general, vocational-technical and terminal degree categories. The academic college preparatory curriculum will be housed in one building; the vocational-technical and terminal degree curricula will be housed in the other. A student, though assigned to one of the buildings because of his curriculum choice, can elect to take a course given at the other building. General courses and physical education will be taught at both schools because neither school has the capacity to take care of the total high school needs in these areas.

If curriculum choice assignment results in overcrowding at either school the pressure will be relieved by assigning more of the general curriculum subjects to the uncrowded school plant and thereby equalize the school population in each building.

*Exhibit "A"*

This plan will provide the best possible instruction for each individual because each curriculum will be strengthened, and in some cases, expanded to meet needs not presently being met. New vocational subjects will be taught, and practical work experience like that presently given in Distributive Education will be given in every vocational course that lends itself to such work experience.

It is the purpose of this program to improve the training of the college bound student and at the same time to train non-college-bound students so that upon graduation they will be immediately useful to an employer in the vocation of their choice or be well qualified to enter a vocational-technical school if they choose.

This system will not accept non-resident students, nor will it make arrangements for resident students to attend schools in other school systems, where either such action would tend to preserve segregation or minimize desegregation. Any arrangement made for non-resident students to attend schools in another system will assure that such students will be assigned without regard to race, color, or national origin.

**ELEMENTARY SCHOOLS**

The Court having determined that Greenville County is operating a dual system composed of "white" and "Negro" students the School Board has resolved to dismantle the dual system by eliminating those factors which have caused some of the schools to be characterized as "Negro".

Faculties will be reassigned in such a manner as to destroy racial identity of the schools with a substantial degree of such reassignment being made in September 1969. (Use of specific percentages is avoided because the nature



*Exhibit "A"*

of the student assignment changes hereinafter set forth makes such determination extremely difficult)

Elimination of the dual system will further be accomplished commencing in September 1969 by the transfer, at attained grade levels, to former "white" schools, of individual Negro students on the basis of standardized testing of all students.

Details of the proposed plan are still the subject of study and will be made the subject of more intensive study and refinement upon approval of the general plan. The School Board would expect to file interim progress reports to the court if the broad principle is sanctioned.

. . . . .

**Plaintiffs' Proposed Plan for Desegregation**

[filed March 18, 1969]

**IN THE UNITED STATES DISTRICT COURT****FOR THE EASTERN DISTRICT OF VIRGINIA****Richmond Division**

Pursuant to direction by the Court, counsel for the plaintiffs offer the following plan for desegregation:

1. All pupils in "primary" grades (e.g., grades 1 and 2) living south of the Meherrin River will be assigned to the Zion School. All pupils in the "lower elementary" grades (e.g., grades 3 and 4) living south of the Meherrin River will be assigned to the Moton School.

2. All pupils in "primary" grades living north of the Meherrin River will be assigned to the Training School. All pupils in the "lower elementary" grades living north of the Meherrin River will be assigned to the Belfield School.

3. All pupils in the "intermediate" grades (e.g., grades 5 and 6) will be assigned to the Emporia Elementary School.

4. All pupils in the "junior" high school grades (e.g., grades 7, 8 and 9) will be assigned to the Wyatt High School.

5. All pupils in the "senior" high school grades (e.g., grades 10, 11 and 12) will be assigned to the Greenville County High School.

6. Within the foregoing basic framework, the grades to be taught at a given school may be adjusted as required by consideration for the number of pupils in certain grades and the relative capacities of the affected schools.

*Plaintiffs' Proposed Plan For Desegregation*

7. Special education classes will be housed in Emporia Elementary School or in such other school as space may permit.
8. Each elementary school teacher will be assigned to a school wherein will be housed the grade now being taught by her.
9. Teachers presently employed in the high schools will be assigned so that the numbers of white and Negro teachers in Wyatt School will be approximately equal and the numbers of white and Negro teachers in Greenville County High School will be approximately equal.
10. Vacancies will be filled by qualified teachers without regard to the race of the applicant or the race of the teacher previously assigned to the position.
11. There will be no distinction based on race in any of the categories of employment, in the assignment of children to classes or classrooms, or in any of the facilities or services offered in any school, including extra curricular activities.

*Plaintiffs' Proposed Plan For Desegregation*

Respectfully submitted,

S. W. TUCKER  
*Of Counsel for the Plaintiffs*

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*Counsel for Plaintiffs*

. . . . .

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# District Court Proceedings

[28] (June 23, 1969)

(Monday at 4 o'clock)

The Clerk: Civil Action No. 4263, Pecola Annette Wright, et al., versus the County School Board of Greenville County, et al.

S. W. Tucker and Henry Marsh, III, represent plaintiffs. Mr. Fred T. Gray represents defendants.

The Court: All right, gentlemen.

. . . . .

[60] . . .

The Court: Gentlemen, I think in this case we ought to get to the findings from the Bench so we won't delay any longer.

I reserve the right to correct any grammatical errors and put in appropriate citations should it be necessary to have this typed up. This matter is a typical segregation suit which has been pending in this court since 1965. The County School Board in Greenville County, Virginia, the Court finds from the interrogatories and the admissions, had been operating their school system under what is known as a freedom of choice plan.

Shortly after the opinion of the United States Supreme Court in the Green and New Kent case this matter came on before this Court on plaintiffs' motions for further relief. That motion was filed over one year ago. Interrogatories were filed and answers to interrogatories were likewise filed.

The answers to interrogatories show that there were seven schools in the Greenville County school system. Two of the schools, Greenville County High School had 719 [61] white students and 50 Negro. The Emporia Elementary had 857 white students and 46 Negro students.

*District Court Proceedings*

The other five schools were composed of completely Negro student bodies. The student enrollment of 809, 552, 255, 439.

On July 10, 1968 this Court entered an order vacating the Court's order of July 8, 1968, and the matter came on before the Court. At that time, that is on July 10, 1968, this Court entered an order directing that the defendants if they could not file a report of compliance with the mandate of the principles enunciated in the case of *Green v. County School Board of New Kent County* they would file on or about August 19, 1968, a plan for desegregation of the public school system, which they contend would bring them within the requirements of the New Kent case.

This matter was brought on for hearing and the defendants were directed to file such a plan on or before the 9th of August. The defendants did file a plan called "Plan of Reorganization" dated August 8, 1968, which indicated that their preliminary studies were such that they felt compliance with the requirements of law to be attained by a geographic zoning, by a pairing of grades, by a combination of geographic zoning and pairing of grades. The School Board directed the Division Superintendent to develop a detailed plan of [62] reorganization. In short no definite plan was submitted to this Court. Just another plan of study.

This Court at that time, or shortly after receiving the report and the motions, indicated either by formal order or correspondence with counsel, or discussion with counsel that the Court would not insist upon a plan to be effective as of this past September, feeling that the time was too close, and particularly in view of the fact that the Superintendent of Schools had just assumed his responsibilities in Greenville County. A plan was finally, after one or

*District Court Proceedings*

two delays at the request of the defendants, was filed some time, I believe, in February, 1969.

That plan asks the Court to approve the continued—as a matter of fact in January 31, 1969, the School Board's plan was to ask this Court to approve the freedom of choice plan with certain minor modifications.

On March 18 plaintiffs submitted a proposed plan for desegregation. The Court heard the testimony on February 25, 1969, at the behest of the defendants at which Mr. Owen testified and Mr. Stone and Dr. Curtis G. Kisse, who testified as to certain testing procedures that could be used and the effects of the results of the tests, but no results were had at that time. There wasn't anything for the Court to give [63] any consideration to and the matter was continued to the end that the defendants could make their tests as suggested by Dr. Kisse and report to the Court with definitive figures.

On June 5 this Court ordered a hearing for this day for the purposes of considering the defendants' report. The Court finds that defendants suggest a plan which would substitute a segregated—one segregated school system for another segregated school system and that is all it is.

The Court has no confidence whatsoever in the testing procedures that apparently were used in this instance, based solely upon the numbers and based upon the testimony of Mr. Owen to the effect that one of the large facets in connection with this proposed plan is the securing of certain Federal funds that are given to people who are economically depressed. It is fairly obvious from the testimony here that if a little over 50 per cent of the population of Greenville County are in that economic situation that any meaningful plan of desegregating the schools will not preclude the county from securing these funds, but even if it did that is

*District Court Proceedings*

not constitutionally viable and there is no reason to delay the desegregation of schools, with little hope from what this Court sees from these figures, and I am disappointed in it because I thought I had bent over backwards with Greenville County, and [64] I thought they were going to come up with a meaningful plan, but it is patently obvious to this Court that a substitution of one segregated system for another segregated system will not work, and the Court so finds.

The Court finds that the suggestion that a vocational school be commenced is in fact for the purpose of continuing a segregated system of schools as evidenced by the report that any such school system would contain, or any such school would contain, I believe—let me get the figures correct—the following student population. I might as well go through all of them. Emporia Elementary School is contemplated would have 549 white students and 281 Negro students for a total student body of 830.

Zion would have 227 white students and 111 Negro students. The training school would have 41 white students and 399 Negro students. Belfield would have 39 white students and 313 Negro students. Moton would have 47 white students and 462 Negro students.

In the secondary school system Wyatt would have 800 Negro school population and 140 white. The other high school, which would presumably have the college course, would have 472 white and 175 Negro.

The Court finds that the purpose of that is to [65] put in effect the tracking system that was criticized by Judge Skelly Wright in the decision by his court.

The Court rejects the plan as being not constitutionally permissible in accordance with the Green case.



*District Court Proceedings*

The Court directs therefore that the proposed plan of desegregation submitted by the plaintiffs is to be put in effect and a mandatory injunction directing the School Board to put that plan in effect commencing September would be entered.

Now, the Court will consider any amendments to it so as not to preclude a better plan, but so there is no further delay and so we don't come up in August and say, "Well now, we have got a plan but can't do it for a year," the School Board is directed today, now, to commence their work to do whatever is necessary to put in effect the plan for desegregation submitted by the plaintiff.

Thank you, gentlemen.

(The hearing in the above matter was concluded at 5:15.)

**Order of District Court**

[filed June 25, 1969]

For the reasons stated from the bench at the conclusion of the hearing on June 17, 1969, and deeming it proper so to do,

It is ADJUDGED, ORDERED and DECREED:

1. That defendants' proposed use of the freedom of choice plan with the modifications set forth in Exhibit A be, and the same is hereby, denied.

2. That the defendants' proposed use of the alternative plan set forth in Exhibit A be, and the same is hereby, denied.

It appearing to the Court that the defendants have failed to submit a proposed plan for the assignment of students in accord with the principles contained in the case of *Green v. County School Board of New Kent County*, it is ADJUDGED, ORDERED and DECREED that:

1. The defendants herein, their successors, agents and employees, be, and they hereby are, mandatorily enjoined, permanently, to disestablish the existing dual system of racially identifiable public schools being operated in the County of Greensville, Virginia, and to replace that system of schools with a unitary system, the components of which are not identifiable with either "white" or "Negro" schools.

2. The Court having considered the proposed plan for desegregation filed by the plaintiffs herein, and being of the opinion that same will lead to a unitary system of schools, the components of which are not identifiable with either "white" or "Negro" schools, the defendants herein,

*Order of District Court*

their successors, agents and employees, be, and they hereby are, mandatorily enjoined to take the necessary steps to the end that the proposed plan for desegregation filed by the plaintiffs with the Court under date of March 18, 1969, be put into effect commencing with the school term beginning in September 1969.

3. The defendants are ordered and directed to report to this Court by no later than August 15, 1969, their actions in compliance with this decree, including therein the anticipated racial composition of the student bodies of each school being operated by the defendants in Greensville County, Virginia, as well as the racial composition of the teachers in each of the schools aforesaid.

Let the Clerk send copies of this order to all counsel of record. It is further ordered that copies of this order be served by the United States Marshal on each of the defendants herein.

/s/ ROBERT R. MERHIGE, JR.  
United States District Judge

June 25, 1969.

**Letter from Council of the City of Emporia to Hon.  
Rufus Echols, Chairman and Members of Greenville  
County Board of Supervisors Dated July 7, 1969**

[Plaintiffs' Exhibit No. 6 to District Court Proceedings  
of August 8, 1969]

The Honorable Rufus Echols, Chairman and Members of Greenville County Board of Supervisers; The Honorable Adolphus Slate, Chairman and Members of Greenville County School Board; and H. B. Vincent, Esquire, Commonwealth's Attorney

Gentlemen:

In 1967-68 when the then Town of Emporia, through its governing body, elected to become a city of the second class, it was the considered opinion of the Council that the educational interest of Emporia Citizens, their children and those of the citizens and children of Greenville County, could best be served by continuing a combined City-County school division, thus giving students from both political subdivisions full benefits of a larger school system.

The Council was not totally unaware of a Federal Court suit against Greenville County existing at that time, regarding school pupil assignments, pupil attendance, and etc., but they did not fully anticipate decision by the court which would seriously jeopardize the scholastic standing and general quality of education affecting City students attending the combined school system.

The City Council's action, in remaining in the combined school system, was taken with sincere intent of cooperation, in good will and in order not to prejudice the Federal Court case. This action delayed the urgency for a division of County assets, monies or other property of value as provided by law.



*Letter from Council of the City of Emporia*

The pending Federal Court action, at the time of Emporia's transition from a town to city, was finally decided by the court on June 23, 1969. The resulting order REQUIRES massive relocation of school classes, excessive bussing of students and mixing of students within grade levels with complete disregard of individual scholastic accomplishment or ability.

An in-depth study and analysis of the directed school arrangement reflects a totally unacceptable situation to the Citizens and City Council of the City of Emporia. The directed plan becomes even more unpalatable when the school records reflect those students of the City who attend the combined school system are not contributing to the "inbalance" which apparently led the court to order school class relocations, bussing and etc.

The court decision, school enrollment figures, public laws and other information concerning public schools, is not restricted to the eyes of governmental or political officials. Such facts, and possible reaction measures or avenues of relief, are well known to responsible citizens, both within and without the City. The City Council cannot escape their responsibilities to the Citizens and taxpayers of the City; they must concern themselves primarily with the best means possible to provide quality education, at reasonable costs, for their children.

Various approaches to the problem have carefully been explored and after very serious discussion, the Mayor and Council have unanimously concluded that the City can best discharge its duty and responsibility to educate the children of Emporia by a City School System which shall be established as a unitary system, the components of which are not identifiable with either white or black schools, effective August 1, 1969.

2

*Letter from Council of the City of Emporia*

The Council realizes it is incumbent upon them to take this only logical course open to them; this action is done with extreme reluctance and sincere compassion for the Citizens, School Board and Governing Body of Greensville County. It is anticipated there will be complete cooperation between the governing bodies and administering school boards for the common good of all citizens.

In unofficial, preliminary joint City-County conferences, the mechanics regarding establishment of a City School System were discussed and more particularly, how a division would affect City-County financial agreements, the geographical lines of the political subdivisions and student school distribution. In these preliminary meetings, the City expressed a sincere need for an increase in its geographical boundaries through extensive annexation in order to provide an adequate tax basis to support an independent school system. The Council is of the opinion annexation of portions of land beyond the City Limits is most desirable in the interest of the people involved and the City. A careful preliminary study, including all facets of school operation and with particular attention to objections raised by County Officials, has been conducted and the facts indicate that it may be feasible to operate a City School System without immediate annexation.

To offset the revenue loss resulting from refraining from immediately initiating annexation procedures, however, existing unresolved City-County financial division, property division and other unsettled matters must be adjusted without delay to effect an orderly effective and economical transition of school affairs.

The following matters are considered urgent, and it is respectfully proposed:

- I. The existing City-County agreement for joint services be terminated in the best cooperative manner.

*Letter from Council of the City of Emporia*

- II. Re-negotiate a new City-County agreement between the governing bodies excluding contractual school arrangements and establishing a procedure for an equity settlement as provided hereafter.
  - A. Continue present agreement providing for existing expense-sharing formula for the offices of Commonwealth's Attorney, Sheriff, Clerk, Courts and Judges, Agricultural Services, Welfare Services, and Jail Services on present basis.
  - B. Add that contractual fire services shall be provided by the City to the County on the same percentage basis.
  - C. Adjust "Buildings and Grounds" portion to provide City participation in office expense of only those offices shared by City and County.
  - D. Provide for an immediate adjustment procedure to contractual arrangement as a result of:
    1. Decennial Federal Census
    2. Annexation or de-annexation by local enumeration procedures
    3. Request of either governing body for an enumeration at their expense, at any time
  - E. Include procedure for equity settlement, authorizing:
    1. Joint employment of a Certified Public Accountant, independent of official City or County association, to determine financial equity of both governing bodies in fund balances and other monies held by the County at time of City transition.

*Letter from Council of the City of Emporia*

2. Joint employment of a professional appraisal organization, independent of any City or County association, to determine values (and required adjustments thereto) of real and personal property held by the County and/or School Board at the time of transition.
- III. Transfer immediately, title of all real school property together with School furnishings and equipment contained therein, in the Corporate Limits from the County and/or School Board to the City of Emporia.
- A. Any adjustments in equitable ownerships after appraisal as provided in E-2 above to be mutually agreed upon.
- IV. The City will accept on a first come, first serve, no transportation basis, any and all students residing in Greensville County who wish to complete or continue their education in City schools. Out-of-City students will be required to pay a tuition fee, based on present pupil operating cost, less financial aids collectible from the Commonwealth.

CITY COUNCIL OF THE CITY OF EMPORIA



**Minutes of City Council. July 9, 1969**

**Minutes Of The Council Of The City Of Emporia  
For July 9, 1969 And July 14, 1969**

July 9, 1969

The City Council of the City of Emporia met in special meeting at 7:30 P.M. on the above date in the Council Chamber of the Municipal Building with Mayor George F. Lee presiding. The following members of Council were in attendance and answered to the roll call:

William H. Ligon  
L. R. Brothers, Jr.  
T. Cato Tillar  
Fred A. Morgan

Julian C. Watkins  
S. G. Keedwell  
M. L. Nicholson, Jr.  
Robert F. Hutcheson

Also present were: D. Dortch Warriner, City Attorney  
Robert K. McCord, City Manager

The Mayor appointed the City Manager as Acting Clerk for the meeting and then announced the purpose of the meeting was for "establishing a City School System." On motion by Mr. Brothers which was seconded by Mr. Morgan, the Council unanimously moved to convene in Executive Session. A motion by Mr. Tillar which was seconded by Mr. Keedwell was unanimously passed on roll call vote that the Council re-convene into the special meeting. A brief discussion of school matters was held, after which Mr. Hutcheson's motion which was seconded by Mr. Morgan was unanimously adopted that "the City Council of the City of Emporia have a special meeting, Monday, July 14, 1969, 7:30 P.M. in the Council Chamber of the Municipal Building and take final action on the establishment of a City School System."

There being no further business, the meeting adjourned.

GEORGE F. LEE, Mayor

Robert K. McCord, Acting Clerk

**Minutes of City Council, July 14, 1969**

July 14, 1969

The City Council of the City of Emporia met in special meeting at 7:30 P.M. on the above date in the Council Chamber of the Municipal Building with Mayor George F. Lee presiding.

The following members of Council were in attendance and answered to the roll call:

William H. Ligon  
L. R. Brothers, Jr.  
T. Cato Tillar  
Fred A. Morgan

Julian C. Watkins  
S. G. Keedwell  
M. L. Nicholson, Jr.  
Robert F. Hutcheson

Also present were: D. Dortch Warriner, City Attorney  
Robert K. McCord, City Manager  
Nell M. Mitchell, City Clerk

Mayor Lee called the meeting to order and welcomed the citizens. Mayor Lee stated this is a very important meeting, and the Council has been meeting constantly in the past week. The purpose of the meeting is to take action on the establishment of a City School System, to try and save a school system for the City of Emporia and Greensville County. It is most important to maintain a public City School System and a superior school system for the approximately 1400 students inside the City. The Mayor said, "when Emporia became a City of Second Class, we could have taken on our school system, but we entered into an agreement with the County." Mayor Lee also stated, "it's ridiculous to move children from one end of the County to the other end, and one school to another, to satisfy the whims of a chosen few." He said, "The City of Emporia and Greensville County are as one, we could work together, to save our school system."

*Minutes of City Council, July 14, 1969*

Mayor Lee told the citizens that the City School Board was Represented by E. V. Lankford, Jr.

Mr. McCord then read a report from the committee appointed to study a suit entered by H. L. Townsend.

Mr. Lankford gave a plan based on Judge Merhige's ruling, and percentages of Negroes in each school for the first seven grades.

Mayor Lee explained that the City's total enrollment of students is 31% and we are paying 34.64% of the school budget, plus 38% of School Debt. In his opinion a City School System wouldn't cost any more, and we could take in County Students on a tuition basis.

Mayor Lee then read a letter from County Board of Supervisors as follows:

"Your letter of 10 July 1969 has been received and thoroughly considered by the Board of Supervisors.

As you are aware, the Greenville County School Board is presently under Federal Court order to place county and city students in all schools owned by the county in accordance with the plan adopted by the Court.

The Board of Supervisors for Greenville County and the School Board for the County are advised that they are legally obligated to provide all school facilities for the county children, and the city children, if they elect to attend, in order to comply with the court order.

Therefore, it will be impossible for the Board of Supervisors and the School Board to sell, or lease, the school buildings situate within the City without placing themselves in contempt of the Federal Court order.

This is the legal position we have been placed and until the Court order has been altered, amended or vacated, we cannot honor your request to convey the school buildings to the City."

*Minutes of City Council, July 14, 1969*

City Attorney Warriner stated that we have requested the County to give us title or lease to us the three schools in the City Limits.

The County advised us, according to law there is still an unitary school system and they had to comply with the law. Mr. Warriner also stated that it is the feeling of Council that it would be a step forward to have our City School System, and the decision must be made by Council.

A discussion followed concerning the termination of the contract with the County. Mr. Warriner pointed out the contract could be terminated through mutual agreement of both parties, or annexation by the City.

Councilman Morgan stated that he had talked over this situation with citizens and also the Board of Supervisors, and he sincerely believes the Board would like to cooperate but are in a bind. He would suggest annexation, or work out something together to terminate the contract.

Mr. William Robinson, a county resident, appeared before Council and told them a meeting was held with residents of the county from three districts and presented a resolution to the County Board of Supervisors for them to work out a negotiable agreement with the City on the school situation. Mr. Robinson said, "the County Board replied they couldn't work out anything right now."

After a discussion on the City's equity in the schools, Councilman Watkins stated he agreed wholeheartedly, we do have equity.

Councilman Keedwell stated we all realize and are concerned about quality of education. Mr. Keedwell also stated that going to City School System would be better than the system proposed by the Judge. Councilman Keedwell said "if annexation is unopposed by County, we could reasonably assume the effective date to be January 1, 1970, which is 4 months of school. We have to do something now to be ready by Sept. 1."



*Minutes of City Council, July 14, 1969*

Mr. Warriner pointed out that the City should attempt by all means to obtain possession of school buildings in the City to start school in September.

Councilman Morgan stated we are under an injunction right now to provide schools for City children.

Councilman Brothers stated that equity should be established immediately to determine what is rightfully ours.

Mr. C. E. Saunders, a city resident, said, "if we have to wait until January to start school, we would be better off." He has three children going in three directions, 2 miles apart under the present court order.

Councilman Morgan said, "let's start something tonight."

Councilman Keedwell stated we could use temporary buildings if it means temporary buildings.

Mr. Don Tillar, a city resident, stated the City Council is concerned about the welfare of city and county children, when we go out of here we've got to sell the idea to all the people.

Mr. Lankford, Chairman of the City School Board, explained we could go in two directions:

1. To ask State Board of Education to create a division of City and County Schools and share School Superintendent, or
2. Ask State Board of Education to create separate school division and we have our own school Superintendent.

Mr. Lankford also told the Council that under a planned budget that approximately 500 county children could attend city schools if the city obtained the buildings wanted. He stated with temporary buildings the greatest problem would be equipment, and there would be no room for students from the county.

*Minutes of City Council, July 14, 1969*

After further discussion, a motion made by Councilman Ligon, that the City School Board be instructed to immediately take all steps to establish a school division for the City of Emporia, and that the City Attorney be instructed to take immediate steps to determine the equity of the City of Emporia in all property, including cash, in which the City and County of Greensville have joint ownership. His motion was seconded by Councilman Morgan and on roll call vote was passed by all eight (8) members of Council voting aye.

There being no further business the meeting was adjourned.

George F. Lee, Mayor

Nell M. Mitchell, City Clerk

**Minutes of Meeting of County School Board  
of Greenville County, July 16, 1969**

[Plaintiffs' Exhibit No. 1 to District Court  
Proceedings of August 8, 1969]

A called meeting of the County School Board of Greenville County was held in the school board office on Wednesday, July 16, 1969 at 11:00 o'clock.

Members present—Adolphus G. Slate, Chairman  
Landon S. Temple  
Dr. J. B. Adams  
Billy B. Vincent  
Supt. S. A. Owen, Clerk

Mr. Fred Gray, school board attorney, Mr. Benjamin Vincent, Commonwealth's Attorney, and Mr. Rufus Echols, chairman of Greenville County Board of Supervisors were also present.

The Board reconsidered plans approved on July 8, 1969 and instructed Adolphus G. Slate, chairman of School Board to release the following information:

During the past several days there have been a number of statements made and rumors circulated regarding the future of the Greenville County Public Schools including those in the City of Emporia.

The Greenville County School Board, in order to clarify the situation and set the record straight as to its actions and intentions issues the following statement:

1. It has been and will continue to be the intention of the Greenville County School Board to provide the highest quality education possible to every child in Greenville County and Emporia.

*Minutes of Meeting of County School Board  
of Greeneville County, July 16, 1969*

2. On June 25, 1969, Judge Robert R. Merhige, Jr. of the United States District Court of the Eastern District of Virginia entered an order directed to the School Board *and their successors* requiring them to "dis-establish the existing dual school system" and to put into effect in September the plan proposed by the attorneys for the N.A.A.C.P.
3. The School Board has instructed its attorney to appeal from the order of June 25, 1969.
4. Immediately after June 25, 1969 the School Board considered the N.A.A.C.P. plan and determined that it is impractical and immediately began a study of a plan to desegregate the schools which will comply with the court's order that the board "disestablish the existing dual school system" but at the same time be practical in operation.
5. The School Board has now completed its study and has prepared a plan for the operation of the schools for all of the children in Greensville County and the City of Emporia. The Board will request the District Court to approve this plan and substitute it for the N.A.A.C.P. plan. This request will go forward as soon as the court can hear the matter.
6. The School Board has been advised that the City of Emporia is taking steps to set up a separate school system for the children of Emporia and, on a tuition basis, for all children of Greensville County who desire to attend the Emporia School System to the extent that the facilities will accommodate them.



*Minutes of Meeting of County School Board  
of Greenville County, July 16, 1969*

7. The School Board of Greenville County fully understands the motives of those seeking to establish a separate system for Emporia and will not attempt to interfere with their activities since it is apparently their sincere belief that they are acting in the best interest of the children of Emporia, however, because this Board believes that such action is not in the best interest of the children in Greenville County we cannot and we will not assist in the separation of the school system, we have not and presently do not plan to transfer any school facilities to the City and we have not and will not agree to dissolve the contract now existing between the County and the City.
8. It is the opinion of the School Board that until the State Board of Education creates a separate school district this school board is responsible for the education of all children in the County and the City.

## **Minutes of City School Board, July 17, 1969**

### **Minutes Of The School Board Of The City Of Emporia For July 17, 1969**

The Emporia School Board met on the above date in the City Manager's office in the Municipal Building at 4 P.M. with Chairman E. V. Lankford, Jr. presiding.

The following members were present and answered to the roll call:

E. V. Lankford, Jr., Chairman  
G. B. Ligon  
Julian Mitchell  
Robert K. McCord, Acting Clerk

Chairman Lankford reported to the School Board on recent activities of a Council appointed committee to study City school matters, the committee consisting of Mayor George Lee, the City Attorney, Mr. Dortch Warriner, City Manager, Mr. Robert McCord, and himself.

In his report, Mr. Lankford advised the board that the final action of the committee was reported to the City Council on Monday, July 14, 1969; after which the following motion was unanimously adopted by the City Council:

"A motion made by Councilman Ligon, that the City School Board be instructed to immediately take all steps to establish a school division for the City of Emporia, and that the City Attorney be instructed to take immediate steps to determine the equity of the City of Emporia in all property, including cash, in which the City and County of Greensville have joint ownership."

In view of the action of the City Council, Mr. Lankford requested the reaction of the School Board and after a com-

*Minutes of City School Board, July 17, 1969*

plete discussion the following resolution, introduced by Mr. Ligon, seconded by Mr. Mitchell was unanimously passed by the City School Board.

THAT WHEREAS by motion unanimously adopted by the City Council for the City of Emporia on Monday, 14 July 1969, the School Board for the City of Emporia was directed to take all necessary and proper steps to establish a school division for the City; and

WHEREAS the Board is of the unanimous opinion that the future well-being of the children of this community requires that the Board proceed immediately to establish such a school division; and

WHEREAS it is the considered opinion of the Board that the requirements under the decree of the Federal District Court for the Eastern District of Virginia in a suit to which the County of Greensville is a party will result in a school system under which the school children of the City of Emporia will receive a grossly inadequate education; and

WHEREAS under the decree aforementioned, there will be substantial overloading of certain school buildings and substantial underuse of other school buildings at an excessive cost to both the County and the City, the cost of school transportation will be exaggerated out of all need in that pupils will be assigned to schools on a basis other than that of proximity, the City's contribution toward education will be substantially increased without any additional benefit in education to its children, and the School Board has been sued by certain taxpayers and students of the City of Emporia to prevent such disruption of the educational processes; and

WHEREAS it is the duty and responsibility of the Board to provide to the children of the City an efficient school system in which they may obtain quality education;

*Minutes of City School Board, July 17, 1969*

WHEREAS it is a considered belief of the Board that this can be accomplished only by means of a separate school division for the City of Emporia.

NOW THEREFORE be it RESOLVED by the School Board for the City of Emporia, Virginia, in special session assembled this 17th day of July, 1969, that the State Board of Education favorably consider this application for the creation of a separate school division for the City of Emporia, Virginia, so as to enable the Board to proceed promptly to furnish public education to the students of the City of Emporia in the fall of 1969.

Chairman Lankford was authorized to seek an immediate meeting with the State Department of Education to present the above resolution and other resolutions of the City Council.

A brief discussion was continued regarding registration and the dates of July 28 through August 1 were established as tentative dates for registration for City Schools.

/s/ E. V. LANKFORD, JR.  
Chairman

/s/ ROBERT K. McCORD  
Clerk



**Minutes of City Council, July 23, 1969****Minutes Of The Council Of The City Of Emporia  
For July 23, 1969**

The City Council of the City of Emporia met in special meeting at 12 Noon on the above date in the Council Chamber of the Municipal Building with Mayor George F. Lee presiding.

The following members of Council were in attendance and answered to the roll call:

Julian C. Watkins  
Lyman R. Brothers, Jr.  
T. Cato Tillar  
M. L. Nicholson, Jr.  
Fred A. Morgan  
Robert F. Hutcheson

Also present were: D. Dortch Warriner, City Attorney  
Robert K. McCord, City Manager  
Nell M. Mitchell, City Clerk

Mayor Lee stated the purpose of the meeting is to consider and adopt a resolution to be presented to the State Board of Education.

Mr. McCord read the following resolution:

THAT WHEREAS THE City of Emporia is a City of the second class situate entirely within the County of Greenville; and

WHEREAS THE City contains approximately 1,400 school children who have heretofore been enrolled in the public schools of Greenville County under a contractual arrangement under which the City shares in the cost of the schools but does not participate in the management thereof; and

WHEREAS as a result of recent decisions in a case pend-

*Minutes of City Council, July 23, 1969*

ing before the Federal District Court for the Eastern District of Virginia in which the County School Board for Greensville County is a party, the residents of Emporia do not believe that the County will be able to furnish school children an acceptable level of education; and

WHEREAS Council concurs in this opinion and is willing to assume its primary obligation to provide the children residing within the City of Emporia a secondary education; and

WHEREAS certain taxpayers and school children of the City of Emporia have filed suit to require the City to proceed immediately to establish a separate school division for the reasons, among others, that the City has no control over the function of the school division and that City school children will be bussed out of the City to attend classes; and

WHEREAS it is the firm intent and purpose of the Council to provide the best possible education to all the children of the City in complete compliance with the letter and the spirit of the Constitution of the United States and all applicable decisions of the Federal Courts interpreting the same; and

WHEREAS the Council has reached the conclusion that a failure on the part of Council to take all necessary and proper action to establish a separate school division would adversely affect the prosperity, growth and vitality of the community in a most serious degree; and

WHEREAS the intent of the Council to establish a separate school division has the near unanimous support of the citizenry of the City of Emporia and it is deemed necessary and essential that the City proceed immediately to that end.

NOW THEREFORE be it RESOLVED by the City Council for the City of Emporia in special session assembled this 23rd day of July, 1969, that the State Board of Education be, and it hereby is, respectfully requested to authorize the creation of a school division for the City of Emporia,

*Minutes of City Council, July 23, 1969*

Virginia, in order that a public school system may be instituted in the fall of 1969.

After brief discussion, a motion was made by Councilman Morgan to adopt the resolution as read and that it be forwarded to the State Board of Education. His motion was seconded by Councilman Tillar and unanimously passed.

There being no further business the meeting adjourned.

GEORGE F. LEE

*Mayor*

NELL M. MITCHELL

*City Clerk*

**Motion to Amend Judgment**

[filed July 23, 1969]

**IN THE UNITED STATES DISTRICT COURT****FOR THE EASTERN DISTRICT OF VIRGINIA****Richmond Division**

The County School Board of Greensville County, Virginia moves that the Court amend paragraph 2 of the order entered herein on June 25, 1969 for the following reasons:

1. The plan submitted by the plaintiffs and approved by the Court is unduly disruptive, would require transportation facilities not currently available and over-crowds some schools.
2. The defendants submit herewith a plan which will provide a unitary school system, eliminates the unnecessary movement of children and make a more efficient use of existing facilities.

(See exhibits A and B)

Wherefore, the defendants move that the plan herewith submitted be approved and the judgment amended to accomplish that result.



*Motion to Amend Judgment*

Respectfully submitted,

COUNTY SCHOOL BOARD OF  
GREENSVILLE COUNTY, VIRGINIA  
FREDERICK T. GRAY

*of counsel*

Frederick T. Gray  
Williams, Mullen and Christian  
Courthouse Square  
Chesterfield, Virginia, 23832

• • • • •

[Certificate of Service Omitted in Printing]

**Exhibit "A"****PLAN FOR OPERATION OF UNITARY SCHOOL SYSTEM BY  
GREENSVILLE COUNTY SCHOOL BOARD**

All children attending schools of Greenville County School Board will be assigned in accordance with the following plan commencing with the opening of schools in September, 1969.

- I. All children attending grades 10, 11 and 12 will attend Greenville County High School.
- II. All children grades 8 and 9 will attend former Wyatt High School.
- III. All children in grades 1 through 7 will attend school according to the following zones (see map attached Exhibit B)
  - a. Moton Elementary School—all children residing in Hicksford Magisterial District.
  - b. Greenville Training School—all children North of but not on Route 58 and East of but not on Route 301.
  - c. Emporia Elementary School—all children living in the City of Emporia and not within the zone of Training School and all children living East of Route 301 and along and South of Route 58 and not within Hicksford Magisterial District.
  - d. Belfield Elementary School—all children in Nottoway Magisterial District and all children in Belfield Magisterial District not included in the Greenville Training School or Emporia Elementary School Zone.

*Exhibit "A"*

IV. Special Education Classes will be offered as required at the Zion Elementary School facility.

V. Faculties shall be completely integrated and Board will report to the Court on or before August 15, 1969 the proposed racial composition of the faculty at each school.

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[Exhibit "B" Omitted in Printing]

## **Minutes of City School Board, July 30, 1969**

### **Minutes Of The School Board Of The City Of Emporia For July 30, 1969**

The Emporia City School Board met in the City Manager's office on the above date. The following members were present and answered to the roll call:

Mr. E. V. Lankford, Jr., Chairman

Mr. G. B. Ligon

Mr. Julian Mitchell

Dr. Paulus Taylor

Mr. Robert K. McCord, Acting Clerk

Mr. E. R. Reidel was also present.

Chairman Lankford reported to the School Board on various activities which have taken place in the school matters since the last meeting, July 16, 1969.

Mr. Lankford described the meeting held in Richmond with the State School Board, State Superintendent, and Administrative Personnel. He advised the Board that the resolution of the School Board, adopted on July 16, 1969, was presented to the State Board of Education, together with a similar resolution from the City Council.

Mr. Lankford advised no final action on our petition would be forthcoming from the State until after their regular meeting August 18, 1969. He did, however, note that Emporia is at the present time a separate school district in all phases except that the existing plan of operation requires joint participation, both financially and administratively, in the office of the local School Superintendent.

Mr. G. B. Ligon exhibited the proposed school registration forms to be used for the year 1969-70. Doctor Taylor submitted a list of volunteers to assist in the registration, as did Mr. Ligon.

*Minutes of City School Board, July 30, 1969*

A motion prevailed that the school registration take place from August 4 through 8, 1969. Registration is to take place in the Municipal Building between the hours of 9 A.M. and 5 P.M.

The Board discussed the possibilities and probabilities of temporary school facilities for use in the event the city was not successful in obtaining adequate existing school buildings or equipment. The acting clerk was instructed to contact the local churches and to investigate available vacant buildings for use as educational facilities.

There being no further business the meeting was adjourned.

/s/ E. V. LANKFORD, JR.  
Chairman

/s/ ROBERT K. McCORD  
Clerk



*Plaintiffs' Exhibit No. 23***Notice—Re: Registration for City School Pupils**

**CITY OF EMPORIA  
MUNICIPAL BUILDING  
EMPORIA, VIRGINIA 23847**

**July 31, 1969**

**TO: ALL CITIZENS AND RESIDENTS OF THE  
CITY OF EMPORIA**

School registration for the 1969-70 season will be held at the Municipal Building on Budd Street during the week of August 4-8, 1969. Registration will be held daily between the hours of 9 A.M. and 5 P.M.

All parents, with school age children, residing in the City of Emporia *MUST* register their children during this period, even though they may have attended school in previous years.

Children who will be six (6) years of age on or before *October 1, 1969*, will be eligible for first grade registration. Those who will be six (6) years of age after October 1, 1969 will not be eligible. Immunization records and birth certificates *MUST* be made available for registration of first grade children.

Applications for out-of-City students who desire to attend Emporia City Schools on a tuition, no transportation basis, will also be received during the week of August 4-8, 1969. Required information for this group will be the same as for City students.

If there are any questions, please call 634-3332 prior to registration date.

Very truly yours,

**CITY OF EMPORIA SCHOOL BOARD**

**IT IS REQUESTED THAT COMMERCIAL AND INDUSTRIAL EMPLOYERS PLEASE POST THIS LETTER ON THEIR PERSONNEL BULLETIN BOARD.**

**Order of District Court**

[filed August 1, 1969]

This day came the plaintiffs by counsel pursuant to notice to the defendants and moved the Court for leave to file a supplemental complaint and to add parties defendant.

It is ORDERED that said supplemental complaint be filed and that a copy thereof, together with a copy of the original complaint herein, a copy of the Court's order herein entered on June 25, 1969, and a copy of this order be served on each of the additional defendants named in the Supplemental Complaint, viz: the Council of the City of Emporia, George W. Lee, S. G. Keedwell, L. R. Brothers, Jr., William H. Ligon, Julian C. Watkins, T. Cato Tillar, M. L. Nicholson, Jr., Fred A. Morgan, The School Board of the City of Emporia, E. V. Lankford, Julian P. Mitchell, P. C. Taylor, and G. B. Legon, all of whom are made parties defendant hereto.

The said defendants shall answer said supplemental complaint within 15 days after service thereof. The plaintiffs' motion for interlocutory injunction is set for hearing on August 8, 1969, at 10:00 A.M.

Enter this 1st day of August, 1969.

/s/ ROBERT R. MERHIGE, JR.

UNITED STATES DISTRICT JUDGE

**Supplemental Complaint**

[filed August 1, 1969]

**IN THE UNITED STATES DISTRICT COURT****FOR THE EASTERN DISTRICT OF VIRGINIA****Richmond Division**

1. The original complaint herein filed on March 15, 1965, is by this reference made a part hereof.

2. The City of Emporia is a city of the second class and is located entirely within the boundaries of the County of Greensville. George W. Lee is the Mayor of the City of Emporia; S. G. Keedwell, L. R. Brothers, Jr., William H. Ligon, Julian C. Watkins, T. Cato Tillar, M. L. Nicholson, Jr., and Fred A. Morgan are members of the Council of the City of Emporia.

3. E. V. Lankford, Julian P. Mitchell, P. C. Taylor, and G. B. Ligon are members of and collectively constitute The School Board of the City of Emporia.

4. During and prior to the 1968-69 school session, and at all times during the pendency of this action, the County School Board of Greensville County operated the public school system for all children of public school age residing in the County of Greensville, including those residing in Emporia; the City of Emporia, since its incorporation in 1967, having contributed its proper share of the budget of the County School Board. The School Board of the City of Emporia has never operated public schools. Prior to its incorporation as a city, the town of Emporia was not a separate school district and was not separately represented on the County School Board of Greensville County.

*Supplemental Complaint*

5. By order herein, dated and filed June 25, 1969, the County School Board of Greenville County was enjoined to disestablish the dual system of racially identifiable public schools being operated in the County of Greenville and to replace that system of schools with a unitary system, the components of which are not identifiable with either "white" or "Negro" schools. Said order further directed said County School Board to put into effect commencing with the school term beginning in September 1969, a certain plan by which children would be assigned to public schools located in the County of Greenville and in the City of Emporia according to the respective grades of said children and in some instances the location of their residences, and in all events without regard for their race.

6. After the entry of said order, to-wit, on July 30, 1969, this Court ruled that the said plan would be modified so as to require the County School Board to assign children to public schools located within the County of Greenville or to public schools located within the City of Emporia in accordance with the attained grades of the children, viz:

<i>Grades</i>	<i>School</i>	<i>Location of Such School</i>
1-2-3	Emporia Elementary	City of Emporia
4-5	R. R. Moton Elementary	County of Greenville
5-6	Belfield Elementary	County of Greenville
7	Zion Elementary	County of Greenville
8-9	Junior High	County of Greenville
10-11-12	Senior High	City of Emporia
Special Education	Greenville County Training	City of Emporia

*Supplemental Complaint*

7. After the entry of said order of June 25, 1969, the Council of the City of Emporia determined that it will no longer contribute to the budget of the County School Board of Greensville County and Council directed the School Board of the City of Emporia to establish and operate public schools for children of school age residing within the City of Emporia.

8. Withholding of funds by the Council of the City of Emporia from the County School Board of Greensville County and execution of the Council's directive by The School Board of the City of Emporia will frustrate the execution of this Court's order and the efforts of the County School Board of Greensville County to implement the above mentioned plan for the operation of the public school system which heretofore has served children residing in the County of Greensville and children residing in the City of Emporia.

WHEREFORE, the plaintiffs pray that, pending this Court's further order, the Council of the City of Emporia and the members thereof and the School Board of the City of Emporia and the members thereof be joined as parties-defendant and be restrained and enjoined forthwith from establishing a system of public schools in the City of Emporia other than that heretofore established and operated by the County School Board of Greensville County and from doing any act which will prevent or interfere with the operation of public schools located within the County of Greensville or



*Supplemental Complaint*

within the City of Emporia by said County School Board in accordance with the orders of this Court.

HENRY L. MARSH III  
*Of Counsel for Plaintiffs*

S. W. TUCKER

HENRY L. MARSH, III

HILL, TUCKER & MARSH

214 East Clay Street

Richmond, Virginia 23219

JACK GREENBERG

JAMES M. NABRIT, III

10 Columbus Circle, Suite 2030

New York; New York 10019

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**Minutes of Meeting of School Board of  
City of Emporia—August 5, 1969**

[Plaintiffs' Exhibit No. 23, to District Court Proceedings  
of August 8, 1969]

The Emporia City School Board met in the office of the Superintendent of schools on the above date. The following members were present and answered to the roll call:

Mr. E. V. Lankford, Jr., Chairman

Mr. G. B. Ligon

Mr. Julian Mitchell

Dr. Paulus Taylor

Mr. Robert K. McCord, Acting Clerk

Mr. S. A. Owens, School Superintendent

The minutes of the previous meeting were presented to all members, and there being no objections the chairman stated they would stand approved.

Chairman Lankford announced to the City School Board that there was no need to introduce Mr. Owens as the City of Emporia School Superintendent, as Mr. Owens is well known to all members of the board.

A general discussion took place with regard to school operations for the year 1969-70.

After each member of the board had commented, Mr. Owens advised the board of certain requirements, administrative processes, etc.

Mr. Owens was requested to ascertain and determine a policy for the distribution of the costs of administering the joint administration office. Such figures would be used for budget purposes in the current school year.

After a discussion of school assignments with the Superintendent, the following motion was introduced by Mr.

*Minutes of Meeting of School Board of  
City of Emporia—August 5, 1969*

Ligon and seconded by Dr. Taylor that, "... the Emporia School Board assigns the present Emporia Elementary School for attendance of all City School Children, of all races, from first through seventh grades and redesignates the Greensville County High School on Harding Street as the Emporia High School and assigns all City School Children, of all races, attending grades eight through twelve to that school." It was further resolved "... that both the Emporia Elementary School and High School be operated in full compliance with the Constitution of the United States and the interpretation of the courts of same, in relation to students and faculty." It was further resolved, "... if the above designated schools are not made available to the City that any and all other buildings used to teach and house the school children of Emporia, be on a completely non-segregated basis." Mr. Ligon's motion was unanimously adopted.

Chairman Lankford advised the board that just prior to today's meeting he had been subpoenaed to appear in Federal Court regarding school matters, August 8, 1969. A motion prevailed that the City Attorney, Mr. Dortch Wariner, together with such assistance as he might require, be authorized to represent the City of Emporia School Board, and its members in any matters requiring court appearances.

There being no further business the meeting adjourned.

ROBERT K. McCORD

*Clerk*

# Proceedings of August 8, 1969

[69]

## PROCEEDINGS

(August 8, 1969)

(Friday at 10 o'clock)

The Clerk: 4263, Pecola Annette Wright and others versus County School Board of Greenville County of Virginia and others.

S. W. Tucker and Henry Marsh, III, represent the plaintiffs.

Mr. Fred T. Gray, D. Dortch Warriner and John Kay represent the defendants.

Counsel ready?

[71] . . .

SAM A. OWEN was called as a witness by and on behalf of the plaintiffs, and having been first duly sworn, was examined and testified on his oath as follows:

### *Direct Examination by Mr. Marsh:*

Q. Mr. Owens, would you state your name and address and occupation, sir? A. Sam A. Owen, Superintendent of Schools, Greenville and Emporia.

Q. Mr. Owen, I believe you were subpoenaed to bring certain minutes and information by the plaintiff. Do you have that information? A. Yes, sir, I have those.

Q. Is this a copy of it? A. Right.

Q. Would you give us the names of the present members of the County School Board, sir? A. Mr. Slate, Dr. Adams, Mr. Vincent, Mr. Temple.

[72] Q. What is Mr. Vincent's first name? A. Mr. Billy B. Vincent.

Q. Were these gentlemen members of the Board on June —as of June 1st? A. Right. Yes, sir.

*Sam A. Owen—for Plaintiffs—Direct*

Q. Now, I believe you have attended several meetings pertaining to the efforts of the city to form a separate school system, is that correct? A. I have attended one meeting with the Emporia City School Board. That was on Tuesday, I think it was.

Q. Which Tuesday, sir? A. This past Tuesday.

Q. That would be August 5? A. August 5 if that is the date.

Q. Who was present at that meeting, sir? A. Present at that meeting were the members of the Emporia City School Board.

Q. Emporia City School Board? A. Emporia City School Board.

Q. Was anyone else present? A. No one else.

Q. No members of the City Council? A. No members of the City Council.

[73] Q. Have you attended any meetings with the members of the Emporia City Council? A. No meetings.

Q. Have you had any discussions with members of the Emporia City Council relating to the forming of a separate school district? A. No discussions with them in reference to this.

Q. Has the—have you attended the meetings of the County School Board, sir? A. I have attended all meetings since I have been there with the County School Board.

Q. Has the County School Board discussed the proposal of the City Council and the City School Board to form a separate school district? A. It was discussed at the one meeting at which time the minutes will show the action taken by the Greensville County School Board, of which you have a copy.

Q. On or about that one meeting do you recall any discussions during the Board meetings? A. No discussions.



*Sam A. Owen—for Plaintiffs—Direct*

Q. Have you prepared any tentative plans to implement the proposal to form a separate school district? A. No plans have been formulated other than the plans [74] presented here to this Court except in the beginning when we were working over various plans to comply with the New Kent decision. At that time we considered many different plans.

Q. Have you supplied figures to the city officials? A. I have figures open to anybody who would come in and want them.

Q. Have you prepared specific groups of figures in response to a request from city officials? A. The only things—

The Court: Just a moment.

Yes, Mr. Gray?

Mr. Gray: May it please the Court, I am not certain Mr. Marsh knows, and I think the Court is going to get a distorted view unless it knows that Mr. Owen is also the Superintendent of Schools for the City of Emporia.

The Court: I understood his testimony was that he said he was Superintendent of Schools of Greenville and Emporia. I understand that.

Mr. Gray: All right, sir.

Mr. Marsh: Go ahead.

The Court: The question was, were you asked to supply any figures?

The Witness: No figures have been prepared for [75] anyone other than the figures we had in the office that anybody could get. We have prepared no additional.

*Sam A. Owen—for Plaintiffs—Direct*

The Court: Who asked for them? That is the question. Did anybody from Emporia School Board, or the mayor, or the council, or anybody, did they ask for them?

The Witness: Yes, sir, the Chairman of the City School Board asked for the figures.

The Court: Find out when and what figures he wanted, Mr. Marsh.

Mr. Marsh: Right, sir. That was my next question, sir.

*By Mr. Marsh:*

Q. When did he request these figures? A. This I am not sure. About two or three weeks ago.

Q. Now, what figures were they? A. They were figures showing the number of students in the county and in the city.

Q. By school? A. I think they were by grades.

Q. By grades and by race? A. By grades and by race as we had to have them for this Court.

Q. Was there a breakdown between pupils who resided [76] in the city and those who resided in the county? A. That's right. We have them broken down that way.

Q. Do you have those figures with the information we requested? A. I don't think those figures were requested there, I believe in the School Board minutes I think we have or they may have been in the School Board minutes.

Q. Mr. Owen, I show you from the information you supplied me what purports to be a copy of the School Board minutes dated July 8, 1969, with figures attached to the minutes of July 16, 1969, with the statement attached and minutes of July 29, 1969. I ask you if you will identify those as being copies of the School Board minutes for those particular dates? A. Right, yes, sir.

*Sam A. Owen—for Plaintiffs—Direct*

Mr. Marsh: Your Honor, we would like to have those introduced as Plaintiffs' Exhibits.

The Court: So ordered.

Mr. Marsh: That will be one exhibit, I suppose. Plaintiffs' Exhibit 1.

(The documents referred to were received into [77] evidence as Plaintiffs' Exhibit No. 1.)

Mr. Warriner: May I see the exhibit, if Your Honor please?

The Court: Yes, indeed.

Mr. Marsh, don't hand the witness anything until counsel has seen it.

Mr. Marsh: Yes, sir. I am sorry. I just received the document from counsel.

The Court: I understand.

Mr. Warriner: I understand that this is one exhibit?

The Court: That is correct, sir.

*By Mr. Marsh:*

Q. Mr. Owen, I hand you what purports to be a number of pupils residing in the City of Emporia who attended, or who were expected to attend the public schools in Greenville for the years 1967-68, 68-69, and 69-70. I have shown this to counsel. I would like to ask if you will identify that as the record prepared by you? A. Yes, sir, this record was prepared by me. The figures for 1968-69 are exact figures as of January of this year.

The figures for 69-70 is based on those figures [78] and the census that was made for pre-school students. To the best of my knowledge the figures are correct as to the number of children as of the dates indicated.

*Sam A. Owen—for Plaintiffs—Direct*

Q. Now, for 1968-69, the current school year, coming school year, those are based on the pre-school census? A. Right. 68-69 is based on actual membership and enrollment as of January of this year taken from teacher reports.

Q. What about 69-70? A. 69-70 are those figures, assuming those in the 12th grade would graduate and based on census figures for the first grade coming in.

Q. When was the census taken? A. The school census was taken just last summer. August or September of last year.

Q. Do you have a pre-school, pre-registration in the spring? A. We have pre-school registration, however, the first graders never are all of those registered. We cannot rely on those figures. We revert to the census figures as to the number of children that should be there.

Q. But you did conduct pre-school registration this past— A. Right.

[79] Q. Do you have those? A. I don't have those figures, but those figures would be less than this for the first grade because so many don't get in to register.

Q. Right. You have subsequent registration in the fall? A. Right.

Mr. Marsh: We would like to have that introduced as Plaintiffs' Exhibit No. 2.

The Court: So ordered.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 2.)

*By Mr. Marsh:*

Q. Mr. Owen, I have here what purports to be a statement of amount of reimbursement from the City of Emporia to

*Sam A. Owen—for Plaintiffs—Direct*

the County of Greenville for the operation of schools for several years.

I have shown this to counsel. I ask you ~~if~~ this was prepared by you, sir? A. This figure was prepared by Mr. Cox, our auditor, who was down at your request. So I asked him to complete it for us. These are the figures from which I would have to base my judgment.

**[80]** Mr. Marsh: We would like to have this introduced as Plaintiffs' Exhibit No. 3.

The Court: So ordered.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 3.)

*By Mr. Marsh:*

Q. Mr. Owen, I have here what purports to be a statement concerning the expenditures that relate to the schools physically located in the City of Emporia. I would like to ask you if you prepared that statement, sir? A. Yes, sir, I did. It is almost virtually impossible to answer that question since we don't keep records by individual schools but keep them by the entire system.

Q. That is your response to that particular request under subpoena? A. Right. Yes, sir.

Mr. Marsh: We would like to have this introduced as Plaintiffs' Exhibit 4.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 4.)

*By Mr. Marsh:*

Q. Mr. Owen, I have here what purports to be an excerpt of the minutes from the special meeting of the City **[81]**



*Sam A. Owen—for Plaintiffs—Direct*

Council and letters of transmittal. I would like for you to identify that. A. This letter was sent to the Chairman of the School Board, yes, sir.

Mr. Marsh: Your Honor, we would like to have that introduced as Plaintiffs' No. 5.

The Court: All right, sir.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 5.)

*By Mr. Marsh:*

Q. Mr. Owen, I have here a letter of transmittal of what purports to be an option by the County Board and City Council of Emporia and several letters that I would like to ask you to identify those documents, sir. A. These are the documents in our file relative to correspondence with the Town of Emporia and correspondence we received from the County Board, received from the city school.

Q. Other than those documents was there any other correspondence between the County Board and the City Council or the Town Board? A. No correspondence.

Mr. Marsh: We would like to have that introduced as Plaintiffs' Exhibit No. 6, I believe.

[82] The Court: So ordered.

(The documents referred to were received in evidence as Plaintiffs' Exhibit No. 6.)

*By Mr. Marsh:*

Q. Mr. Owen, when were you employed as superintendent of the Emporia school system? A. Approximately August 15 last year.

*Sam A. Owen—for Plaintiffs—Direct*

Q. August 15? A. Approximately. I have forgotten the exact date.

Q. 1968? A. '68. This is my first full session there.

The Court: Yes, that's right.

*By Mr. Marsh:*

Q. This is for ~~the~~ city now, not the county? A. I was employed by the City School Board and County Board.

Q. At the same time? A. Yes, sir.

Q. Now, how many meetings of the City School Board have you attended, sir? A. The City School Board met with the County School Board prior to my coming there. Since being there they met jointly, the two Boards met jointly and they employed another [83] superintendent. One joint meeting and I have met once with the City School Board. I have met monthly with the County School Board with the exceptions of special meetings that were called which would be shown in the minutes.

Q. Now, when was the joint meeting, sir? A. The joint meeting I would have to look back at the date to see. It was prior to July 1st. It was prior to July 1st.

The Court: What did you say the purpose of that meeting was, Mr. Owen?

The Witness: The purpose of that was that the two Boards get together and had the joint responsibility of employing a superintendent was the purpose of that meeting.

The Court: For what year?

The Witness: This was this year.

The Court: Superintendent of what schools?

The Witness: Of Greenville County and Emporia.

*Sam A. Owen—for Plaintiffs—Direct*

The Court: I thought you had been employed on August 1, 1968.

The Witness: Yes, sir, that was a one-year contract.

The Court: I see. This was for the next year.

The Witness: Yes, sir.

**[84] By Mr. Marsh:**

Q. That was the first meeting that you had attended, the meeting that was some time prior to July 1st? A. Right.

Q. It was the first meeting of the City Board that you had attended? A. Right. Now, when I first came down, as well as I recall, the two Boards met together for a little while, but it would have been for the same purpose.

Q. Of confirming your contract? A. Right.

Q. And the meeting this year was some time prior to July 1st? A. Right. Some time prior to.

Q. Did you meet with the City Board any time in between? A. I met with the City School Board none in between and only once as a City Board.

Q. When was the one meeting you had with the City School Board? A. That, then, I believe was August 5 we determined that date to be the first Tuesday.

Q. August 5 of this year? **[85]** A. Yes.

Q. I believe you said only the City Board? A. Members of only the City Board were present.

Q. Have you performed any functions for the City School Board since you have been employed by them, sir? A. None—would you repeat that question, please? The whole time that I have been there I have been directly responsible from a superintendent's capacity for the children both in the City of Emporia and in the county.

Q. My question was: have you performed any functions for the City School Board? A. No, sir, other than just

*Sam A. Owen—for Plaintiffs—Direct*

give them figures that we have in the office for anybody that wants.

Q. Mr. Owen, I have here what purports to be an agreement between the City of Emporia, Virginia, and the Board of Supervisors of Greensville County, Virginia. I would like to ask you if you can identify this document, sir?

Mr. Warriner: If Your Honor please, Mr. Owen had nothing to do with this contract. I will be glad to stipulate that is a copy. I assume it is a copy.

The Court: All right. So ordered. Exhibit 7.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 7.)

[86] The Court: Do you have many more documents, Mr. Marsh?

Mr. Marsh: We are checking, Your Honor.

The Court: Well, the only reason I ask is that it seems to me that counsel are probably going to be in a position to stipulate that they are true copies, if they are really, and we could save some time. We can take a short recess if you have many more and you could get together.

Mr. Marsh: I think that would help.

The Court: All right, we will take a short recess.

(The witness stood aside.)

(A recess was taken at 10:25 to reconvene at 10:50.)

(The witness resumed the stand.)

The Court: All right, Mr. Marsh.

Mr. Marsh: Your Honor, we have reached an agreement as to the exhibits. We have three more exhibits which were furnished by the superintendent.

*Sam A. Owen—for Plaintiffs—Direct*

The Court: All right, if you pass them up to the clerk they will be marked.

Mr. Marsh: Let me read off what they are.

The Court: Exhibit 8 or 9?

[87] Mr. Marsh: Eight will be the School Board budget for the three years 67-68, 68-69, 69-70.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 8.)

Mr. Marsh: Nine will be the average daily attendance figures for 1960 and for 1967-68, 68-69, and 69-70.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 9.)

Mr. Marsh: Ten will be the suit papers of a suit that was filed in the Circuit Court of the County of Greenville against the County School Board and City School Board and the County Board of Supervisors and the County School Board.

Mr. Warriner: If Your Honor please, I believe that one has to do with the budget and does not include 69-70.

The Court: It will speak for itself, but it is the School Board budget.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 10.)

Mr. Marsh: Your Honor, we have no more questions of Mr. Owen.

The Court: Very well.

Any cross-examination, gentlemen?



*Sam A. Owen—for Plaintiffs—Cross***[88]** *Cross Examination by Mr. Warriner:.*

Q. Mr. Owen, could the superintendent's office readily draw a plan complying with the requirements of the Constitution and the orders of this Court excepting the city school children and the former elementary children in the elementary school? A. We have all the figures showing the number of students in each grade. We have other figures showing the number of rooms in each of the buildings that we are now using. It would be a matter of arithmetic to sit down and figure buildings that would be used. A plan could be worked out, yes, sir.

The Court: You mean like when you say a matter of arithmetic, you mean a matter of a couple hours' or days' work?

The Witness: A day's work as far as figuring from the arithmetic part of it.

The Court: Well, the question was, could you readily draw a plan. Now, let's have a yes or no answer.

The Witness: Yes, sir, I can draw a plan physically putting children in to be presented to the Board for their approval.

**[89]** The Court: Now, I would like to know how long it would take you to draw that plan. When you say readily, that could mean anywhere from a day to five months.

The Witness: I could sit down and draw a plan, but then that plan we drew out to be presented to the Boards would depend upon the Boards' approval.

The Court: Never mind the Board. The question was could you readily draw a plan that would be

*Sam A. Owen—for Plaintiffs—Cross*

consistent with the requirements of law. That is what counsel meant.

The Witness: Yes, sir.

*By Mr. Warriner:*

Q. Would that be a day's work or two days' work, or a morning's work? A. As far as placing numbers in classrooms, a day's work.

Q. And then the rest of it is what you have to do with regard to the Board, is that correct? A. Yes, sir.

Q. Would these figures—would this plan render available to the city school system Emporia Elementary School and Greenville High School?

The Court: I am afraid I didn't understand that question, Mr. Warriner.

[90] *By Mr. Warriner:*

Q. Could such a plan render available to the city school system the Emporia Elementary School building and the Greenville County High School building? A. If the city children were not going with the county children and a new plan were presented, buildings would be empty.

Q. Would there also be a surplus of teachers in the county school system? A. Naturally if you lose 12 or 1300 students it would be more teachers than the Greenville County school system would need for these children.

Q. Is your contractual relationship with your faculty such that they could be released and hired by the city school system if the bodies so agreed? A. If the—

The Court: That is true of any contract, isn't it, Mr. Warriner? If everybody agreed you could abrogate it.

*Sam A. Owen—for Plaintiffs—Cross*

*By Mr. Warriner:*

Q. Speaking of the two bodies and not the teachers agreeing, but the two governmental bodies agreeing. Of course, the teachers would have to agree also? A. On agreement between teachers and the School Board [91] the contract can be broken in 15 days. The teachers can be released. Fifteen days notice with agreement between the two parties.

Q. The figures that you furnished to Mr. Langford, the Chairman of the Emporia City School Board, were these figures the same figures that you had submitted to the Court in this case in compliance with the Court's request?

A. I did not submit those figures in the exact form, however, in our office as of January we worked up the figures in every conceivable manner in which they might be asked so we could go to the one source and use these. They are figures we have copies laying in there, as I mentioned before, we would furnish anybody at their request.

Q. In the Exhibit B, I believe it was, Exhibit 2, this is a sheet of paper, as I recall it, in which you project the attendance to the county schools for the year 1969-1970. In that exhibit are you assuming that all children who attended county schools last year will attend county schools this coming year without any withdrawals or other acts being taken by the parents? A. That's right. With no action taken by parents and no withdrawals, then that is the number of students we would expect approximately. A small percentage one way or the [92] other.

Q. Mr. Owen, do you consider as an educator the plan advanced by the city a feasible plan for the education of the city children in the year 1969-1970? A. The plan as presented to the Court now, I only know what I read in the paper about that, and reading in the paper I read right

*Sam A. Owen—for Plaintiffs—Cross*

many wrong things in the paper lately. I would like to see the plan and study it over before answering that.

Q. If the city's plan included the education of city school children in the Emporia Elementary School for grades one through seven and in Greenville County High School buildings for grades eight through twelve in the year 1969-1970, assuming some 1,350 to 1,400 students, assuming teachers are available and assuming that the equipment presently in the school is available, would that be a feasible educational plan for the education of the children for the City of Emporia? A. It would be, I think.

Q. Could such a plan be implemented for the school year 1969-1970, in your opinion, as an educator? A. If the School Board's buildings are provided by the—

Q. Leaving out the policy question, sir. I want to [93] know the physical facts. A. Yes, sir, if we have got the teachers and the buildings we can educate the children.

Q. All right, sir.

It appears that some suggestion is being made of collusiveness by someone. I ask you, Mr. Owen, whether I have conferred with you about this case other than over a cup of coffee, and about a half a cup?

The Court: I don't want him to answer that. You are an officer of this Court, Mr. Warriner. You need not protect yourself, sir.

Mr. Warriner: Thank you, sir.

No further questions.

The Court: Mr. Gray?

May I find out who is representing who here?

Mr. Gray: If Your Honor please, I am still representing the County School Board of Greenville

*Sam. A. Owen—for Plaintiffs—Cross*

County. Mr. Warfiner and Mr. Kay are representing the School Board for the City of Emporia.

The Court: All right, sir.

*Cross Examination by Mr. Gray:*

Q. Mr. Owen, there has been introduced into evidence [94] as Exhibit 1 the minutes of several Board meetings commencing with July 8. One of those was the meeting of July 16, 1969, to which is attached a statement of the Board minutes that say that the Board reconsidered plans approved July 8 and instructed Adolphus G. Slate, Chairman of the School Board, to release the following information. And there follows a statement with respect to the position of the County School Board and the matter that is now before the Court with respect to the withdrawal of the students.

I ask you, sir, was that the position that the County School Board took at that time with respect to this matter?

A. Yes, sir, that is the position the County School Board took.

Q. Well, has there been any change in the position of the County School Board to your knowledge? A. No, sir, to my knowledge there has been no change.

Q. Mr. Owen, with respect to the question on the drawing of the plan. I ask you if in conjunction with the efforts of the County School Board to come up with a plan for this Court have you compiled statistics as to where all the children live, and do you have maps showing the location of the children, spot maps I believe you call them? A. Yes, sir. We have spot maps.

[95] Q. You have broken these down into various zones? A. Yes, sir.



*Sam A. Owen—for Plaintiffs—Cross*

Q. And you have "broken" them down as between the county and the city? A. Yes, sir.

Q. Had you not done all of that groundwork would you be able to say to the Court you could draw a plan in a day?

A. No, sir.

The Court: You knew how many lived in the city all the time, didn't you, Mr. Owen? If you are going to use two schools in the city what would be so difficult? You knew how many children lived in the city, didn't you?

The Witness: Yes, sir.

The Court: You didn't need a spot map for that, did you?

The Witness: I had to go back through the figures to find out where the children lived. When the Courts come in to us in one direction without going back and getting the additional information. So I couldn't tell.

The Court: What you are saying is that you could readily draw a plan by virtue of the work you had already done as Superintendent of the Schools for all of the children?

The Witness: Yes, sir. And compiling that [96] information that I would need.

The Court: And under the plan that you could draw, or as contemplated or suggested by counsel, the City School Board would be doing what the County Board had been doing, is that correct? They would be acting in their place in reference to the city children?

The Witness: They would be acting with regard to the city children.

*Sam A. Owen—for Plaintiffs—Cross*

The Court: They would be the successors to the School Board of the County insofar as those children are concerned, is that correct? They would be doing the same thing?

The Witness: The county under the proposed plan, as I understand it, the County School Board to be responsible for the education of children in the county and the city would be responsible—

The Court: Right. And before it the county was responsible for the city and county children?

The Witness: Yes, sir. By agreement.

The Court: Insofar as the city children are concerned, the new Board, that is the Board that is going to begin to act now, because they haven't acted before—

The Witness: In selection of superintendent.

The Court: That is all. But then they would be [97] doing what the County Board has been doing?

The Witness: For the Chairman in Emporia.

The Court: If that is not a successor I don't know what is.

Go ahead.

*By Mr. Gray:*

Q. With respect to the—maybe I misunderstood the question that was asked previously, but my understanding was that if you respond you could draw a plan for the county children because of the information that you now have also, is that correct? A. Yes, sir, I have the figures now that we would need, yes, sir.

Q. And I believe we told the Court when the last plan was approved by the Court that in the event the city children should be withdrawn that we would ask the Court

*Sam A. Owen—for Plaintiffs—Redirect—Recross*

to indulge us in the preparation of a different plan because we would be dealing with about half the number of children? A. Yes, sir. At least we requested that.

Mr. Gray: All right.

*Redirect Examination by Mr. Marsh:*

Q. Mr. Owen, you say you have the breakdown between [98] the city and the county. What is the general racial breakdown between the children in the county and again the children in the city? A. This is approximate. I don't have the figures in front of me. In the over-all it is approximately 63 per cent Negro over-all. Approximately 50 per cent Negro in the city.

Q. And what is the approximate percentage in the county? A. It would be greater than 63 per cent. On up to 69, 68, or 70. Somewhere along in there.

Q. And what is the approximate number of children we are talking about in the city, and approximately the number in the county? A. Approximately 1,300 in the city and approximately 2,900 in the county.

Mr. Marsh: No further questions.

The Court: Any further examination, gentlemen?

*Recross Examination by Mr. Warriner:*

Q. Mr. Owen, the City School Board for the City of Emporia pre-existed the attempt to form this school, city school; is that correct? When was the City School Board, City [99] of Emporia, instituted? A. It was there prior to my coming.

Q. You are familiar, of course, with the operation of the state schools and state school rules and regulations.

*George F. Lee—for Plaintiffs—Direct*

Is the City of Emporia required by law to have a City School Board? A. Yes, sir, they must have a City School Board.

Q. Is this City School Board required by law and by the Constitution of Virginia to see to the education of children of the City of Emporia? A. They are charged with that responsibility, yes, sir.

Q. Do they receive that responsibility as successors to the County School Board or in their own right under the statute and under the Constitution? A. My understanding is under the statute and the Constitution the School Board in a locality is responsible for the education of the children in this jurisdiction.

Q. Thank you.

Nothing further.

The Court: Anything else, gentlemen?

Mr. Marsh: No questions.

The Court: You may step down.

[100] Thank you, Mr. Owen.

(The witness stood aside.)

The Court: Call your next witness.

Mr. Marsh: Mr. Lee.

GEORGE F. LEE was called as a witness by and on behalf of the plaintiffs, and having been first duly sworn, was examined and testified on his oath as follows:

*Direct Examination by Mr. Marsh:*

Q. Would you state your name and address, and occupation, please, sir? A. My name is George F. Lee. I am

*George F. Lee—for Plaintiffs—Direct*

Mayor of Emporia. I run a retail jewelry store. I live at Emporia, Virginia.

Mr. Marsh: Your Honor, we have shown the exhibits which we hope to put in by Mr. Lee to counsel and by agreement they can be admitted. We would like to present them all at the same time.

The Court: All right, sir. Fine.

Mr. Warriner: Mr. Marsh, are those exhibits you are introducing now all of the exhibits you subpoenaed or a selection from the exhibits you subpoenaed?

Mr. Marsh: They are selections, I believe.

The Court: Put them all in.

[101] Mr. Warriner: I understand they should all go in.

The Court: They are all in. Put them in.

Mr. Marsh: We only left out one.

The Court: Put it in anyway.

The Clerk: These are considered one exhibit?

Mr. Marsh: No. We would like to have them marked separately.

The Court: As separate exhibits?

Mr. Marsh: Yes, sir.

The Court: All right. You prepare the list, then.

Mr. Marsh: All right, sir.

First will be a copy of the minutes of the City Council of Emporia.

Mr. Gray: Is that No. 11?

The Court: That will be 11. Start with 11 and you mark them in pencil, Mr. Marsh. Then you prepare a list for the clerk.



*George F. Lee—for Plaintiffs—Direct*

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 11.)

Mr. Marsh: Your Honor, there are three or four minutes that are pertinent to this issue. We have prepared [102] those as a separate exhibit for convenience.

The Court: Very well.

Mr. Marsh: That includes the meeting of July 9, July 14, July 23rd.

The Court: Now, are these exhibits being marked 11?

Mr. Marsh: Those will be 12.

The Court: 12. All right.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 12.)

Mr. Marsh: And July 29. These will be No. 29.

The Clerk: Merely additional minutes?

Mr. Marsh: No, sir. All of the additional minutes will be 11, the earlier minutes. The later minutes beginning with July 9 will be No. 12.

The budget of the Town of Emporia for 1967-68 will be Exhibit No. 13.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 13.)

Mr. Marsh: The budget for the City of Emporia for 1968-69 will be No. 14.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 14.)

[103] Mr. Marsh: The budget for the City of Emporia for 1969-1970 will be No. 15.

*George F. Lee—for Plaintiffs—Direct*

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 15.)

~~Mr. Marsh:~~ The payments to the county by the Town of Emporia for the operation of schools for the city children will be No. 16.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 16.)

The Court: You refer to the Town of Emporia and the City of Emporia. Somebody better explain it to me before we are through.

Mr. Marsh: I think the Mayor can explain that. The payments for 1968 appear to be payments for 1968-69 and will be No. 17.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 17.)

Mr. Marsh: Payments for 1967-68 will be No. 18.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 18.)

Mr. Marsh: Statement of the expenditures of the City of Emporia will be No. 19.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 19.)

The Court: No, that is 20.

Mr. Marsh: The last one I had was 18.

The Court: What was the last one? 18?

Mr. Marsh: The last I had was 18.

The Court: All right.

Mr. Marsh: The statement showing the expenditures should be No. 20.

*George F. Lee—for Plaintiffs—Direct*

The Court: Have you seen these before? Do you know whether you want them or not? It appears to me you haven't seen them.

Mr. Marsh: They insisted they all go in.

The Court: Then put them in and make up the list. I want to finish before tomorrow.

Mr. Marsh: 21 will be the letter dated July 29 from the City School Board.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 20.)

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 21.)

Mr. Marsh: Your Honor, there is a telegram, Your Honor, sent by Mr. Lee, purportedly. I would like to have that introduced as 22. It is in the Court's file, sir.

[105] (The document referred to was received in evidence as Plaintiffs' Exhibit No. 22.)

Mr. Marsh: I don't believe counsel has seen it. May I show this to counsel?

The Court: With the note attached placed there by the Court. While they are looking at it, Mr. Lee, I hope you understood the Court's position as to why I could not read it until counsel had acquiesced.

The Witness: Yes, sir.

The Court: Is that the way you wrote it, Mr. Warriner?

Mr. Warriner: If Your Honor please, I am not certain.

Mr. Marsh: Mr. Lee, I would like to show you what purports to be a telegram. Would you see if you can identify it, sir?

*George F. Lee—for Plaintiffs—Direct*

The Witness: Yes, sir, I understand there was some misspelling in it.

Mr. Marsh: Other than the misspelling this is it?

The Witness: Yes, sir, this is the telegram.

The Court: Careful now, Mr. Lee. You look at it real close.

The Witness: I will have to read it, Your Honor, [106] if you please.

The Court: I will tell you what you are going to get to is that part where you intend to operate schools with regard to race.

The Witness: That is what I meant. This, of course, was completely erroneous and was not our intent, naturally.

The Court: Sorry, Mr. Marsh. You have got to get them on the wing.

The Witness: Thank you, sir.

*Direct Examination by Mr. Marsh:*

Q. Now, Mr. Lee, I believe you were present at the meeting of the City Council at which this matter was discussed?

A. Yes, sir.

Q. And I believe this idea of forming a separate school district, according to the minutes, was formed after the Court's order of June 25? This meeting was in July? A. On this specific plan, yes, sir.

Q. Do you know which schools the county planned to, or the city planned to use to operate their plant? A. Yes, sir.

Q. Which schools? [107] A. We would propose to use what is presently now the Greenville Elementary School located on Main Street for all of the children between one and seven. We would propose to use the high school as located on Harding Street for all of the children between the ages or the grades of eight through twelve.

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*George F. Lee—for Plaintiffs—Direct*

Q. What other buildings, sir? A. That is all, sir.

Q. Now, I believe those two particular buildings are buildings that were formerly the all-white high school and the all-white elementary schools, is that correct? A. That is correct, sir.

Q. And presently they are being used to house predominantly white populations, is that correct? A. That is correct. That is correct, sir.

Q. Only Negroes who have elected to choose out by freedom of choice are enrolled there? A. Yes, sir.

Q. May I have the exhibits?

Mr. Lee, I believe you were Mayor when the Town of Emporia became the City of Emporia? A. Yes, sir.

Q. Would you explain to the Court how that came about, [108] sir, and when? A. Sir?

Q. And when? A. All right, sir. Actually the Court decreed that we would become a city on July 31, 1967, a city of the second class. Our reason—did you ask me the reason for it? How it came about?

Q. I said how it came about. A. We just went through the regular court proceedings of having an enumeration and the statute I believe states that if you have 5,000 in population or more you may become a city of the second class. We elected to become a city of the second class. It was made effective after we had proven to the Court that we did have in excess of 5,000 population on July 31, 1967.

Q. I believe you are familiar with the agreement between the county and the city? A. Yes, sir.

Q. Are you familiar with paragraph 8 dealing with the methods for terminating the agreement? A. Generally. I would have to read it. I was in on the negotiating, but, of course, I believe the method would be for annexation proceedings or something of that nature.



*George F. Lee—for Plaintiffs—Direct*

Isn't that correct, sir?

[109] Q. Would you check the agreements, sir? A. All right, sir.

Q. Would you indicate the notice that has to be given by your party in order to terminate the agreement? A. All right, sir.

It is a four-year agreement.

Q. And when was it entered into, sir? A. It was, I believe, in April of 1968. I believe April, 1968, the parties agree—you don't want me to read this?

Mr. Warriner: This is in evidence and it speaks for itself.

The Court: It speaks for itself.

Mr. Marsh: I was asking the witness if he knew the provisions for terminating?

The Witness: Yes, sir. I know them.

Mr. Marsh: What kind of notice?

The Court: Why don't you lead him? Say, "Isn't it true that the agreement requires so much notice?" See if that doesn't help, Mr. Marsh.

*By Mr. Marsh:*

Q. Is it true that you have to give more than a year's notice to terminate the provisions of the agreement, Mr. Lee? [110] A. That is one of the provisions. There is another provision. The parties also agree that if annexation proceedings should start then that would immediately terminate the agreement.

Q. It would terminate by the commencement of the proceedings? A. Yes, sir.

Mr. Warriner: If Your Honor please—

*George F. Lee—for Plaintiffs—Cross*

The Court: I will read it, Mr. Marsh, really.  
Mr. Marsh: Very well.

*By Mr. Marsh:*

Q. Mr. Lee, prior to the meeting in July there had been no discussion about the City Council with respect to operating a separate school district. It doesn't appear in the minutes. A. There has been many, many discussions, sir, on it.

Q. But not in the meeting? A. No, sir.

Mr. Marsh: I have no further questions of this witness, Your Honor.

The Court: Any cross-examination?

Mr. Warriner: If Your Honor please, I may have [111] been a bit hasty when Mr. Owen was a witness. I was cross-examining Mr. Owen reserving the right to recall him as a witness.

The Court: Oh, of course. Of course.

*Cross-Examination by Mr. Warriner:*

Q. I would reserve the right with all our witnesses.

Mr. Lee, the school district for the City of Emporia was formed, as I understand it, on the 1st of August, 1967. Is that correct? A. That is correct. Yes, sir.

Q. And has been existing since the 1st of August, 1967?

A. Yes, sir.

Q. The School Board for the City of Emporia was appointed in August of 1967? A. Yes, sir, that is correct.

Q. And has been in existence since August of 1967? A. Yes, sir.

Q. The City of Emporia discharged its obligation to educate its children by means of payments of some sums of

*George F. Lee—for Plaintiffs—Cross*

money to the County of Greenville in return for which the County of Greenville agreed to educate the children without tuition [112] charge to their parents, is that correct?

A. That was part of the agreement we made, yes, sir.

Q. Was this agreement entered into immediately in August of 1967? A. No, sir.

Q. Were there any problems in connection with getting such an agreement and did those problems include the probability of the City of Emporia at that time operating its own school system? A. Yes, sir.

Q. Go ahead, sir. A. We met many, many times after we became a city of the second class attempting to establish equities in the school buildings in order to operate. We were turned down flat by the county in every instance. Finally they even threatened to not let our children go to the schools, and this is why we were forced into an agreement a year later almost.

Q. This was in the middle of the school year 1967-1968 they threatened to make your children withdraw from school? A. Yes, sir, if we didn't pay for them.

Q. It was at that time and under those circumstances that you entered into the contract of April 1st or April 4, 1967, or 1968? [113] A. 1968, yes, sir.

Q. Did you at that time contemplate that the contract might be terminated under its terms and the city form its own school system? A. From the day that the contract was made we attempted—we contemplated breaking it, yes, sir.

Q. I asked you whether you contemplated terminating it by its own terms.

The Court: It sounds like a fair arrangement.

*George F. Lee—for Plaintiffs—Cross*

*By Mr. Warriner:*

Q. Mr. Lee, the school buildings which you have stated is according to the School Board's plan would be the schools operated by the city. Are those buildings also located within the City of Emporia? A. Yes, sir.

Q. Is there another school building located within the City of Emporia? A. Yes, sir.

Q. Is that building needed in order to educate the children of the City of Emporia? A. No, sir.

Q. Is that building as well equipped and as modern a building as the Main Street one which you are choosing? [114] A. No, sir.

Q. Should the City of Emporia take on the obligation of operating and maintaining along with the upkeep of that building when it doesn't need it? A. No, sir, the building is in bad shape.

Mr. Marsh: Your Honor, I have tried to bear with the leading but I think it is getting a little far out now. I would suggest that counsel not lead the witness quite so far.

The Court: You object?

Mr. Marsh: Yes, sir.

The Court: Overruled.

Go ahead. Let's get moving.

*By Mr. Warriner:*

Q. Now, Mr. Lee, did you or the City of Emporia, I should say, have any control here to say who was sent to which school and for what reasons? A. None whatsoever.

Q. Was it a part of the policy of the City of Emporia to maintain segregated schools, de facto segregated schools,

*George F. Lee—for Plaintiffs—Cross*

pseudo segregated schools, or any other type of segregated schools? A. No, sir.

Q. Has the City of Emporia at any time ever had an [115] opportunity to officially present its position as to what type of schools should be operated within the City of Emporia? A. Never had the opportunity.

Q. Is it the purpose of the City of Emporia in operating its schools beginning in 1969-70 to have a unitary school system both with respect to the pupils and with respect to the faculty and administration, and is it the purpose of the School Board of the City of Emporia to have such a system in compliance with the Constitution of the United States and all decisions applicable to the operation of the public schools? A. Absolutely.

Q. Will the School Board and the City of Emporia directly or indirectly deprive any citizen of Emporia of his rights under the Constitution of the United States and the court decisions interpreting same? A. Of course not, no, sir.

Q. A question was raised, Mr. Lee, on direct examination, as to whether the implication was as to whether the actions taken by the city was a direct result of the decree entered by this Court on the 25th of June, 1969. Would you explain to the Court what precipitated the action on the part of the city including reference to that decree? A. Well, there is no question that this decree caused [116] the city to try and act with haste. I am absolutely opposed to private school systems, and a movement started immediately. I fought it. I am opposed to it. I feel we have an obligation to the citizens and the children in Emporia on a complete non-racial basis. We can operate. The way it is now a child starting in the first grade in the City of Emporia will have to be bussed to six different schools before he leaves high



*George F. Lee—for Plaintiffs—Cross*

school. I feel that all of our children, and it is a money thing too—we are paying more than our share. We have one-third of the pupils in the county live in the City of Emporia, but we are paying 38 per cent of the county debt services and we are paying 34.26 per cent of the total cost of the schools. Included in that is bussing in which a majority of the children of Emporia don't receive this transportation business.

So I feel that if we could be allowed by the courts to operate a complete non-segregated school system and lump all of our children from this group into one school age group into this group and this age group for high school in the other school we can save on transportation, save the taxpayer's money, and we can have a better system by having more curriculum than is presently furnished our children, which we have no control over. And I think our people deserve a better school program, black and white. This is why we decided this was the [117] time to go and kill this private school business before it got started, and serve all the citizens of the City of Emporia.

Q. Mr. Lee, did the City of Emporia have the leadership and the will to make the transition from a largely segregated school system to a completely unitary school system?

A. Absolutely. We have our city and our town has a non-racial hiring practice. If I might elaborate for a moment, Your Honor.

Q. If you will. I want you to answer this question that has to do with the will to go to a unitary school system and then if you want to elaborate. A. Absolutely and without question. And our citizens are 100 per cent, I say, behind us on it.

Q. Does the city have any question about the county's ability to operate a unitary school system? A. I do, yes, sir. I don't know about the city. I say that I do.

*George F. Lee—for Plaintiffs—Cross.*

Q. You are Mayor and preside at the Council meetings?

A. Yes, sir.

Q. Do you have any impressions from that? A. We have never been able to get cooperation from the County Board of Supervisors, and that is who our contract is with. And that is who we are paying the money to. We are [118] not paying it to the School Board. And so it is a question in my mind, yes, sir. I think it is a question in the minds of the members of the City Council.

Q. Is it the opinion of the City of Emporia that in order to have a well-functioning, working unitary system in the heart of southside Virginia that it will take the leadership of the city government and of the leading city members and the members of Council and so forth in order to provide the children with the best possible education? A. Yes, sir. Our educational system needs to be improved, and I think under this system we can improve it.

Q. Mr. Mayor, what reasons prompted the city—I shouldn't say reasons—what were the factors which the city took into account in making its determination to become a city of the second class in August of 1967? A. The inequities involved, again, prior to this agreement. This agreement that we reached.

Q. No, sir. A. Okay, excuse me.

Q. What factors prompted the city to become a city of the second class in August of '67? A. Well, the sales tax is one thing. The other was the inequities we were sharing with the county at that time. [119] We were paying about 49 per cent of the operating cost of the county at that time.

Q. By what— A. 39, I am sorry.

Q. Speaking of the citizens of the Town of Emporia? A. With one-third of the population we had no say-so in assessments or reassessments in appointing these groups

*George F. Lee—for Plaintiffs—Cross*

and we were haggled. We tried to set this straight. This contract helped some, but it still didn't equalize the inequities. But when the state passed the sales tax and did not put it back to the point of collection and let the county overrule the towns on it then we became a city of the second class.

Q. Would it be correct to say in summary there were economic reasons? A. Very definitely.

Q. Mr. Mayor, in your opinion can the City of Emporia commencing in the school year 1969-1970 provide for all of the children of the City of Emporia a unitary school system which complies with the statutes and the laws and with the Constitution, which will give them a substantially superior education to what you can reasonably contemplate would be received from the county school system? A. Without question, yes, sir.

[120] Q. Is that your primary motive in seeking the separate school district operation of schools? A. Absolutely. Without question.

Mr. Warriner: Would Your Honor excuse me for one minute?

*By Mr. Warriner:*

Q. Mr. Mayor, what has been the history of the race relations in the City of Emporia over the past—how many years have you been connected with the city government? A. About 12.

Q. Over the past 12 years? A. Our race relations have been excellent. We have appointed long ago a bi-racial committee. When we became a city we were then under the Constitution, as I was advised by our attorneys, were supposed to appoint a Justice of the Peace from each ward,

*George F. Lee—for Plaintiffs—Cross*

first established wards. We have a distinguished citizen of our city, Dr. Paul Taylor, a Negro, who was one of the first appointees to the City School Board. We appointed a distinguished citizen as Justice of the Peace in that particular ward.

We only had at that time a seven-man police force and we have hired two Negroes. We only have one working now. We applied for a dispatcher and we didn't apply for race, creed, [121] or color. We just hired recently a Negro lady who is a dispatcher for the city police.

We have never had a demonstration. Our city instituted the action that built a \$25,000 Olympic pool in the Negro district. I ran Norman Lincoln Rockwell out of town because he came in to stir things up. The Court later freed him, but I didn't let him speak in Emporia, and I found out later by the Courts that I was illegal in getting him out. But we have a non-racial hiring practice and I think our industry in the area are the same way.

We have got a new industry in town that has got a Negro foreman working predominantly white people. This has never been a concern of mine or the citizens in the city.

Q. When did you institute your non-racial hiring practice for police, police dispatchers and the like? A. Well, this has been going on for several years. I couldn't tell you exactly.

Q. Do you believe—I don't suppose you could speak as an expert— A. No, sir.

Q. —but do you have reason to believe that your action in instituting a separate school system for the city has the support of both the black community and the white community [122] in the City of Emporia? A. I think we have a majority of the support of all the citizens in Emporia.

Q. Do you believe that both communities have the con-

*George F. Lee—for Plaintiffs—Redirect*

fidence in your ability and your willingness to have a completely unitary school system that will be operated without regard to race? A. I think all of the citizens in Emporia trust me, if I said that is the way it would be.

Q. Do you also have the confidence in the School Board for the City of Emporia that they will carry out the directions of the City Council? A. Yes, sir, absolutely.

Q. Are you aware of the racial composition of the city schools? A. Yes, sir.

Q. Do you know what the percentage would be, or ratio? A. I could only say roughly 50-50. It would be larger in the elementary schools and less in the high school, but just a few percentage points. I don't know what they are. The judge has them, I am sure, sir.

Mr. Warriner: Thank you, Mr. Lee.

[123] Mr. Gray: No questions.

The Court: Redirect?

*Redirect Examination by Mr. Marsh:*

Q. Mr. Lee, you are aware of the litigation that has been pending since 1965 to desegregate the schools? A. Yes, sir.

Q. It is the fact that your Council and almost everyone in town is aware of that litigation, wouldn't you say? A. Yes, sir, I would. Yes, sir.

Q. Now, did your Council ever publicly declare its concern that the school systems be completely integrated? A. No, sir. We have never had the opportunity to confront or meet with the Board of Supervisors that just built a bridge across town.

Q. Did you ever state publicly a resolution or make a speech? A. When we became a city?



*George F. Lee—for Plaintiffs—Redirect*

Q. Saying that you wanted to completely integrate the school system? A. I could not say. I would have to answer "no" to that question. Yes, sir.

Q. Now, the only high school left in the county, if [124] the Greenville school would be used by the city, the only high school left would be the Wyatt High School, is that correct? A. Yes, sir, which is identical to the other school.

Q. Has any white children ever attended the Wyatt School, sir? A. Except in a summer program I don't believe so.

The Court: Isn't that the building that you said was in such bad shape?

The Witness: No, sir. No, sir.

*By Mr. Marsh:*

Q. That is known as a Negro high school though, isn't it? A. Basically, yes, sir. Yes, sir. That is correct.

The Court: Let me get it straight now. I thought you said one was in deplorable condition.

The Witness: Your Honor, if you please, there is inside the city in the last few years the county has built all the new schools outside of the city. But there is in the City of Emporia an elementary school that was used as a Negro school that is in bad shape. This Wyatt High School, because all of the new buildings have been built surrounding the county, and all districts have a new school, the Wyatt High School he is speaking of was built the same way as the identical plan to the [125] white high school insofar as a plant building is concerned, and is in excellent condition.

The Court: What you are saying is there would only be one high school left in the city available for

*George F. Lee—for Plaintiffs—Redirect*

use by the county, but there will be elementary schools?

The Witness: No, sir, there would be a high school in the city and a high school in the county that are identical.

The Court: I want to know what is left after you used what you want to use available to the county in the city.

The Witness: There is this old physical plant that needs a lot of renovation.

The Court: That was an elementary school?

The Witness: It just had some renovation done and the Superintendent of Schools—

The Court: There would be two physical plants in the city that would still be available to the county, is that correct?

The Witness: No, sir, only one.

The Court: Only one?

The Witness: Yes, sir. I am sorry.

The Court: What is the name of it?

The Witness: That would be the Greenville County [126] Training School I believe is the name of it, isn't that correct? Yes, sir.

*By Mr. Marsh:*

Q. That is an elementary school? A. Yes, sir.

Q. So the only high school left in the entire county would be the Negro high school, the Wyatt High School? A. Yes, sir. It is a present high school. That is what it is used as now.

Q. Now, did the School Board or Council ever attempt to intervene in the litigation that was pending? A. No, sir. We have never been asked to a meeting, sir.

*George F. Lee—for Plaintiffs—Redirect*

Q. I am sorry. I didn't understand. A. No, sir, we have never been asked to a meeting, I don't believe.

Q. I wasn't speaking of a meeting. I said, did you ever attempt to intervene in the litigation? A. Oh, no, sir. No, sir.

Q. In this court? A. No, sir.

The Court: You weren't looking for trouble, were you?

[127] The Witness: No, sir.

*By Mr. Marsh:*

Q. So really you didn't avail yourself of the opportunity to present your views to this Court? A. No, sir.

Q. You indicated that you could comply with all the decisions of the Court. You said you were aware of the order entered by this Court providing for the desegregation of the schools? A. Yes, sir.

Q. Under your plan you would not be able to comply with that order? A. Not the order of this Court as presented for the county plan, but we would send all of our children, black and white, to the one elementary school, and all children, black and white, to the high school. That plan has never been presented to this Court, I don't believe.

Q. I am speaking of an order that was entered by this Court which prompted you to act. Under your plan you would not be able to comply with that order as it is written? A. Oh, no, sir. No, sir.

Q. I believe you were aware of that when you started your plan, that you wouldn't be able to comply with that order? [128] A. Yes, sir.

Mr. Marsh: No further questions.

*George F. Lee—for Plaintiffs—Recross*

*Recross Examination by Mr. Warriner:*

Q. Mr. Lee, in order to try to straighten out the question about the school business, is it not correct that there are three elementary school buildings located in the county?

A. There are more, aren't there? Yes, three new ones, yes, sir.

Q. Are all of those three elementary school buildings newer than any school building located within the city? A. Absolutely.

Q. Have they all been built within the past five or six years? A. Yes, sir.

Q. One of them in fact was just completed last year? A. Yes, sir.

Q. Is there one, the county high school building which is newer than any school building within the city? A. It is the same age.

Q. Same age? A. Yes. I mean both were built at the same time [129] brick by brick, plan by plan. Identical plan in both of them.

Q. Is the city then attempting to take the best from the county in the way of physical facilities, or is it instead taking only that which is within the city? A. That is all. That is correct, yes, sir.

Q. Now, there remains one other school, the Greenville County Training School, which is within the city. A. Yes, sir.

Q. Is that building, regardless of its condition, is that building needed by the city? A. No, it is not needed and it has a new addition to it that was just built onto it, but it is not needed by the city, no, sir.

Q. Is it as big as the Emporia Elementary School? A. No, sir.

*George F. Lee—for Plaintiffs—Recross*

Q. Could you use that instead of the Emporia Elementary School? A. No. No, sir; it would not be large enough to handle the children.

Q. Would there be any need to divide the children between Greensville County Training and Emporia Elementary School? A. I wouldn't want to divide the children in race. [130] I would want to put them all together.

Q. Even if they weren't divided by race? A. If we didn't have them together to give them the very best education we can.

Q. Now, Mr. Lee, you are aware, I believe you answered on direct examination, you are aware of the purposes of the Court's order of the 25th of June, 1969, are you not? A. Yes, sir.

Q. And I believe that the purpose of that order as stated in the order is to have a unitary non-racial, non-racially identifiable, neither black nor white, just schools? A. Yes, sir.

Q. Has the City of Emporia done anything of any nature to frustrate the effect of that order? A. No, sir.

Q. Has it been the intent, the purpose—well, I suppose intent and purpose are not proper for inquiry, but do you know of any desire on the part of the City of Emporia to frustrate the order of the Court? A. We asked at a meeting, and asked by letter, for the county to inform the judge of it prior to his entering this order, of what we wanted to do and the reasons why.

Q. After he entered the order? [131] A. It was after he entered the order, right. That came back from an appeal, right.

Q. Did you ask the county to request the Court to so draw a plan that you could take or you could be accommodating to his order? A. Yes, sir.



*George F. Lee—for Plaintiffs—Recross*

Q. In having a unitary system in the City of Emporia?

A. Yes, sir.

Q. Do you know whether the county did that? A. As far as I know they did not.

Q. Did you then attempt to advise the Court yourself by telegram? A. I did, sir.

Q. So that the Court would know that the purpose of the actions of the City of Emporia were to accommodate too and carry out his order rather than to frustrate it? A. Yes, sir.

Mr. Warriner: Thank you, sir.

Mr. Tucker: If Your Honor please, I know Mr. Marsh has examined the witness before, but there are two or three things that my familiarity with Greensville County would assist in if I could be permitted to examine.

The Court: Only if there is no objection.

[132] Gentlemen, any objection?

Mr. Warriner: No, sir.

*Further Examination by Mr. Tucker:*

Q. Mr. Lee, the Emporia Elementary School is located on South Main Street right across from the post office, isn't it? A. Yes, sir.

Q. Main part of the town? A. Yes, sir.

Q. The Belfield School is located something like two or three miles north of the town and back off an established road probably about a quarter or half of a mile? A. Yes, sir, I think that is correct.

Q. It was the last school that was built? A. Yes, sir.

Q. And it has never been populated by anyone but Negro children, I mean no white children have attended that school? A. I don't know, but I think that is correct.

*George F. Lee—for Plaintiffs—Recross*

Q. Isn't it generally considered that the school was built as a Negro school? A. Yes, I think it is, yes, sir.

[133] Q. All right, let's look at the Zion located something like a mile and a half southeast of Emporia. A. Yes, sir.

Q. In the county.

Are you familiar with that site? A. Yes, sir.

Q. Are you familiar with the fact that it was a very low piece of ground, a swampy type ground that was selected by the School Board to build a school on for— A. County School Board, yes, sir. Yes, sir. I agree it is a poor site.

Q. Very poor site.

Then the other school was located to the west of Emporia about a mile or so south of a subdivision known as Washington Park, which I believe might stir some memories in His Honor's mind, I don't know. As a matter of fact it was off an established road also? A. Yes, sir.

Q. So that a roadway had to be cut through to even get to the school? A. Yes, sir.

Q. Now, that was also built as a former Negro school? A. Yes, sir.

[134] Q. Zion District School built for Negro school? A. Yes, sir.

Q. So that really they are all inferior sites? A. Yes.

Q. And in back out-of-the-way places, that is a fact? A. I would say that was a fact.

Q. Now, comparing even the plants themselves with Emporia Elementary School, is there anything that compared about these schools, elementary schools, that would be relieved for the county that at all compare favorably with the Emporia Elementary School? A. They are newer buildings. I visited all of them when they had dedications. I have made talks at each one.

*George F. Lee—for Plaintiffs—Recross*

Q. Newer buildings, but are they as attractive? A. Well, you mean from a physical thing?

Q. From appearance? A. I would say no, because they are not as large, of course.

Q. As a matter of fact Emporia Elementary School is the only Emporia Elementary School that has an auditorium?

A. Yes, sir.

Q. Which also doubles for civic functions and the [135] like? A. Yes, sir.

Q. And Greensville County Training School has an auditorium? A. Yes, sir.\*

Q. No other school in the county has an auditorium? A. Greensville County is the one that we would not need.

Q. But that is the one you say is in very bad condition? A. Yes, sir.

Q. For all practical purposes the only real serviceable auditorium is in the Emporia Elementary School? A. Yes, sir.

Q. Is there any facility that the Emporia Elementary School does not have that a modern elementary school should have? A. I couldn't answer that because I am not an educator. The other schools are certainly more modern in Emporia.

Q. More modern in the sense they have been built recently? A. Cleaner, lights, all that business.

[136] Q. In the sense of having the equipment and so forth? A. I am sure they have the equipment. It would be the same.

Q. I see.

I think that is enough.

The Court: Any other examination?

Mr. Warriner: One other.

*George F. Lee—for Plaintiffs—Recross**Further Examination by Mr. Warriner:*

Q. Will you, Mr. Mayor, by utilizing Emporia Elementary School deny any citizen of the City of Emporia on account of his race any right? A. Absolutely not. This is what we hope to accomplish.

Q. Thank you.

The Court: Mr. Lee—

The Witness: Yes, sir, Your Honor.

The Court: —I take it from what you have said, and I hope I am not simplifying it too much, that you have little confidence in the Board of Supervisors of the county?

The Witness: Very definitely, sir.

The Court: I gathered that you feel the same way about the School Board because, if I understood you correctly, [137] you said you doubted their ability to operate a unitary system?

The Witness: No, sir. I have a great deal more respect and confidence in the School Board. I haven't much for the county. In fact one of them just had to leave his seat.

The Court: But you still don't believe they can operate a unitary school system?

The Witness: Not an efficient one, no, sir.

The Court: Now, you obviously, as everybody in the world apparently knew, this matter has been before the court for well over a year?

The Witness: Yes, sir.

The Court: You knew that the people affected including the citizens of your city and students were going to be involved in a change of school plans for over a year?

*George F. Lee—for Plaintiffs—Recross*

The Witness: Yes, sir.

The Court: Isn't that correct, sir?

The Witness: Yes, sir.

The Court: And did you know that the Superintendent of Schools had asked for an extension to prepare a plan stating that he couldn't get it up?

The Witness: Yes, sir. We read that in the papers, yes, sir. I was quite aware of that, yes, sir.

The Court: How many times did your School Board [138] meet with the School Board of the county, or ask to meet with them in discussing the plan to be submitted to this Court commencing back in whenever we met last year, which I believe was June or July, perhaps August?

The Witness: Since it was a moot Board I don't believe they have ever discussed it.

The Court: When you say a moot Board, the truth of the matter is, whether it be by virtue of your contract or not, your School Board for all practical purposes—

The Witness: Yes, sir.

The Court: —has functioned only because you were required by law to have a School Board?

The Witness: Yes, sir.

The Court: Is that—can I stop right there?

The Witness: Yes, sir, that is correct.

The Court: That is the only purpose.

The Witness: Well, because we could not establish equities with the county. That is correct, yes, sir.

The Court: I understand.

Now, where would you get a Superintendent of Schools?



*George F. Lee—for Plaintiffs—Recross*

The Witness: Well, sir, we have an application right now before the State Board. They meet in Williamsburg on [139] the 20th of this month, I believe, to try, and I might get my terminology wrong, there is a difference between a division and a district.

The Court: I don't understand it myself.

The Witness: Under the state law we can operate our system with the County School Superintendent working for us as well as working for the county.

The Court: You would need his cooperation to do that? You would need the County School Board's cooperation and perhaps even the supervisors', is that correct?

The Witness: Yes, sir, we need the School Board. I think we will get that.

The Court: They have got to help you to take it?

The Witness: Yes, sir. We will need their help, and I think we can get that.

The Court: The same about teachers. Have you got teachers now?

The Witness: Yes, sir.

The Court: Now, you already have them?

The Witness: No, we don't have them now, but we have teachers available, sir.

The Court: Did you know, or did your School Board know, that this plan that was approved by the Court is subject [140] to change at any time? Did you know that, sir, or did you all?

The Witness: No, sir.

The Court: Or are you under the erroneous impression that that is it?

The Witness: I am a layman and I thought that was it.

*E. V. Lankford—for Plaintiffs—Direct*

The Court: You think the School Board is under that impression too?

The Witness: Yes, sir.

The Court: It is erroneous.

The Witness: Thank you, sir.

The Court: All right, gentlemen.

Did the Court's questions prompt any other examination of the witness?

Thank you.

(The witness stood aside.)

Mr. Marsh: Mr. Lankford.

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E. V. LANKFORD, JR. was called as a witness by and on behalf of the plaintiffs, and having been first duly sworn, was examined and testified on his oath as follows:

*Direct Examination by Mr. Marsh:*

**[141]** Q. Would you state your name and address? A. My name is E. V. Lankford, Jr. I live in Emporia, Virginia.

Q. Mr. Lankford, what is your position with the Emporia City School Board? A. I am a member of the School Board and was duly elected Chairman of the School Board.

Mr. Marsh: Your Honor, counsel have agreed that the three items requested of Mr. Lankford could be admitted. I think the next number is 23.

It will be the minutes of the meeting of the Emporia City School Board of July 17, the meeting of the Emporia City School Board of July 30, 1969, and the meeting of the Emporia School Board of August 5, 1969.

*E. V. Lankford—for Plaintiffs—Direct*

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 23.)

Mr. Kay: All one exhibit.

Mr. Marsh: No. 24 would be a letter addressed to Mr. Slate, Chairman of the County School Board, from you, Mr. Lankford, as Chairman of the City School Board as No. 24.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 24.)

Mr. Marsh: I show you, which was not furnished [142] by you, a copy of a notice to all citizens of Emporia, and to residents, indicating that children who live out of the city and want to attend a city school could be admitted. This would be No. 25.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 25.)

Mr. Warriner: If Your Honor please, I am not sure of the implication. Was that this was requested and refused?

The Court: No, I gathered this is not—

Mr. Marsh: It was not requested.

Is that a notice that your Board caused to be issued, sir?

The Witness: Yes, sir, this was sent to all the water customers of the City of Emporia.

*By Mr. Marsh:*

Q. That would be 25? A. I say the water customers because that was the only mailing list available.

Q. Mr. Lankford, other than those three meetings for which we have minutes did your Board have any other meetings, sir? A. Yes, sir.

*E. V. Lankford—for Plaintiffs—Direct*

**[143] Q.** What other meetings? **A.** We were appointed some time during the month of August, 1967. We met, I can't recall whether it was officially or not, whether it was unofficial, but we met on numerous occasions to attempt to seek a separate school system for the City of Emporia.

**The Court:** Commencing when?

**The Witness:** Commencing as soon as possible, sir.

**The Court:** I mean when did you first meet for this purpose, to establish a separate school system?

**The Witness:** Some time in the latter part and during the latter part of 1967.

*By Mr. Marsh:*

**Q.** Did I request you, sir, to bring copies of complete minutes of each meeting since January 1, 1968? **A.** Yes, sir.

**Q.** The only minutes you brought were the minutes of those three meetings which were just admitted? **A.** Those are the only ones in the file.

**Q.** Have you had any meetings for which you did not bring the minutes, sir? **A.** The only official meeting that could have been had was a joint meeting with the County School Board to carry out our **[144]** appointment of a superintendent.

**The Court:** Mr. Lankford, I think the point that we are trying to establish, I may be wrong, but has the Board met for the purpose of attempting to operate a separate school system, and if you met I assume you take minutes, and that is what we are talking about. Have you done that prior to this litigation?

*E. V. Lankford—for Plaintiffs—Direct*

The Witness: I say we did in the latter part of '67.

The Court: Then you would have minutes of that meeting, would you not?

The Witness: I assume the minutes are in the files.

The Court: Who keeps the minutes?

The Witness: The clerk.

The Court: Would the Superintendent of Schools have been there, or anybody else?

The Witness: No, I do not think the superintendent would have been there.

The Court: But you don't have those minutes with you?

The Witness: No, sir.

*By Mr. Marsh:*

[[145] Q. But you did not meet during 1968? A. Apparently not. There are no minutes in the file.

Q. You did not meet during 1969 until the first date which was in July? A. That is correct. Except there had to be a meeting jointly with the County School Board to reexecute Mr. Owen's contract.

The Court: Wouldn't Mr. Lee have been at these meetings that you are referring to about meeting for a separate school system, Mr. Lankford?

The Witness: Not that I know of, sir.

The Court: The Mayor wouldn't be there?

The Witness: Not as a matter of course.

The Court: But all the School Board members would be there?

The Witness: Should be there, yes, sir.

The Court: All right, sir.



*E. V. Lankford—for Plaintiffs—Direct**By Mr. Marsh:*

Q. Mr. Lankford, you are aware of the schools that would be remaining in the county? A. Yes, sir.

Q. If your City School Board took the Emporia Elementary School and the Greenville County School—[146]

A. If we, yes, sir.

Q. You are aware of the fact that the only high school would be the Negro high school? A. The Wyatt High School.

The Court: Mr. Lankford, are you aware if you all do this it is going to have an effect on the Greenville County School System? It is bound to, is it not?

The Witness: Yes, sir, we remove pupils and money.

The Court: It is going to make it rough on them, isn't it?

The Witness: Well, we would be removing pupils and financial support.

The Court: It is going to have an effect?

The Witness: Yes, sir.

The Court: An adverse effect, isn't that correct?

The Witness: I can't speak for everyone.

The Court: You are going to take some of their teachers, aren't you?

The Witness: Surplus, yes, sir.

*By Mr. Marsh:*

Q. As a matter of fact you presented in the figures to the joint meeting, you presented the figures showing the [147] percentages and the number of Negroes and white pupils in both jurisdictions, is that correct? A. Both in a county system as currently and in the city system.

*E. V. Lankford—for Plaintiffs—Direct*

Q. Those figures showed that the percentage of Negroes, if the city withdrew its pupils, the percentage of Negroes in the remaining system would be about 70 per cent, sir; it would increase the percentage of Negroes in the remaining county system? A. I would think that would be true, yes.

Q. Would it reduce the percentage of experienced now by the city pupils under the Court's order? A. It would reduce to some extent.

Q. I believe the percentage is about 50 per cent the Mayor testified in the city, is that your recollection? A. We believe it to be 50-50. May I add something to that?

Q. Certainly. A. We do not know how many white children have been lost to the private schools so we have no way of determining the exact number of children for that matter that will attend.

Q. And your understanding of the percentage in the county is it is about 70 per cent? [148] A. That would remain in a pure county system. I assume that would be approximately correct.

The Court: Mr. Lankford, before I forget. When do you contemplate opening school?

The Witness: As soon as possible. Of course in September.

The Court: Well, do you have a specified date?

The Witness: The specified date, as I understand it for the school system is—

The Court: I mean for the new system that you are contemplating.

The Witness: Your Honor, of course our primary obstacle is the buildings into which, the city buildings into which to house the system. If those buildings were to become available to us prior to the end

*E. V. Lankford—for Plaintiffs—Direct*

of August I would estimate we could have a school system in operation by the end of September.

The Court: What you are telling me is everything is iffy because you don't know whether you are going to have the buildings and you don't have the teachers, you don't have a Superintendent of Schools. Isn't this correct?

The Witness: We have a Superintendent of Schools, yes, sir.

The Court: You have hired one?

[149] The Witness: Yes, sir.

The Court: Who have you hired?

The Witness: The City of Emporia and the County of Greensville is a single school division. Now, a school division has a superintendent who is Mr. Owen.

The Court: Who could perhaps three or four different school systems if they happened to be in the division, is that correct?

The Witness: As I understand it, yes, sir.

The Court: So you feel that you have a superintendent?

The Witness: We know we have a superintendent, yes, sir.

The Court: But you don't have the first school teacher?

The Witness: No, sir, not on contract.

The Court: You don't have the first building?

The Witness: Not designed for a school, no, sir.

The Court: You don't have the remotest idea what date these children will start to go to school?

The Witness: That is correct.

The Court: All right, sir.

*E. V. Lankford—for Plaintiffs—Cross**By Mr. Marsh:*

[150] Q. Mr. Lankford, I don't think you testified to this. Did your Board, the School Board, seek to intervene in the pending litigation in Federal Court which has been pending since 1965? A. No, sir, we were not. As a School Board we had nothing to do with the County School Board. We would never meet. The only two times that the Boards ever acted jointly is to hire the superintendent.

Q. You and the members of your Board were aware of this litigation? A. As individuals, yes, sir. I am reasonably sure the rest did.

Q. Did your Board ever in any of its meetings ever pass any resolutions pertaining to asking the County Board to bring about complete integration of the school system, to bring about a unitary school system? A. No, sir. We had nothing to do with the county system.

Q. Have you or any members of your Board publicly advocated an integrated school system and abolition of freedom of choice? A. No, sir, not that I recall.

Q. Have you as an individual ever advocated that [151] publicly, sir?

Mr. Warriner: If Your Honor please, I think this is going beyond the scope of the inquiry as to what this individual might have advocated somewhere else. He is not here as an accused.

The Court: I think so too, Mr. Marsh. I think I understand the situation.

Mr. Marsh: No further questions of Mr. Lankford.

*Cross-Examination by Mr. Warriner:*

Q. Is it not correct, Mr. Lankford, that you, the Mayor, the City Council, have publicly, at public meetings with the



*E. V. Lankford—for Plaintiffs—Cross*

press present and with citizens present stated your purpose, your desire and your intent to form a unitary school system for the City of Emporia operated without regard to race? A. Yes, sir.

Q. Has this been covert or overt, open and outwardly?  
A. Open and outwardly.

Q. Have you attempted to hide it? A. No, sir.

Q. You were asked a question by Mr. Marsh which I understood your answer to be contrary to that, if my understanding was correct, or were you incorrect? [152] A. I can't recall the question at the moment.

Q. I believe he asked you whether you had ever publicly advocated a unitary school system, and my question was have you not publicly stated your intent and purpose to operate a unitary system? A. Yes, sir.

The Court: That is since this Court order, isn't that correct? Isn't that what you mean?

The Witness: Publicly as a member of the local City School Board.

The Court: Since this Court ordered it, just in the last month?

The Witness: Yes, sir.

*By Mr. Warriner:*

Q. The Mayor has also done that? A. Yes, sir.

Q. The mailing list for that registration notice for the city schools, was that mailed to any select list, that is any racially select list? A. No, sir. They were the water customers, which is an automatic mailing system.

Q. Was that information also published over the radio? [153] A. Yes, sir.



*E. V. Lankford—for Plaintiffs—Cross*

Q. I assume that is also a non-racial beam from the radio? A. Yes, sir.

Q. There has been no attempt, I take it then on the part of your School Board to make any plea or ploy or other act which is racial in its effect insofar as registering for the school system? A. No, sir.

Q. I understood from your testimony that in the early part of your existence, from August, September, October, 1967, that your School Board met formally and informally, to the best of your recollection for the purpose of considering the formation of a separate school system? A. Yes, sir. We are charged by state law to establish a school system. And as we were appointed we met to that end.

The Court: Well, what made you so happy until now? You were satisfied. You have been charged with that since 1967. You just turned it over to the Greenville County and you didn't complain. What happened now that you have decided at this last minute?

The Witness: I personally, and I think my School [154] Board since we were formed two years ago have never been happy.

The Court: But you didn't do anything about it?

The Witness: True. The contract was signed.

The Court: Tell me why now? What is it now that you decided that you all ought to do something?

The Witness: We feel that within the City of Emporia we can operate a consolidated system within two buildings.

The Court: Haven't you felt that for two years?

The Witness: Yes, sir.

The Court: But you didn't do anything about it?

*E. V. Lankford—for Plaintiffs—Cross*

The Witness: We were forced into a contract.

The Court: Well, you still have that contract, haven't you?

The Witness: Yes, sir, we do.

The Court: What has changed then, Mr. Lankford? That is what I want to understand.

The Witness: The fact that our pupils in this city will go to six different school buildings before they finish school.

The Court: You mean assuming the plan is never changed?

The Witness: Assuming the plan is never changed.

[155] The Court: Of course you knew the plan had been changed in a matter of several weeks recently. You knew one plan was ordered and then another plan submitted and approved, so you knew it was subject to change?

The Witness: I suppose it is subject to change, yes, sir.

The Court: All right, sir.

The Witness: But we knew nothing but what had been publicized.

The Court: Did you ever go to the Public School Board and say, "Here, consider this plan"? You all didn't do anything, did you?

The Witness: We are not legally a part of the school. You mean as an individual did I go?

The Court: Well, even as an individual. But I am not concerned with that. I am concerned with you as a School Board. Did the School Board ever meet and say, "Let's suggest this to the superintendent." I understood from your statement that he works for you?

*E. V. Lankford—for Plaintiffs—Cross*

The Witness: No, sir, we did not. State law provides that we shall meet only to hire the superintendent.

The Court: Then you really haven't been a School Board except for purposes of hiring a superintendent?

[156] The Witness: In a sense that has been the only official action except for signature on a contract.

The Court: If you did it now you would become a School Board all of a sudden?

The Witness: Yes, sir.

The Court: And it is going to have a deleterious effect on the students of Greenville County because you are going to take some of their superintendents and he will be responsible to two Boards and take buildings that they have been using, isn't that correct?

The Witness: That is correct.

The Court: You consider that neighborly, Mr. Lankford?

The Witness: In a sense I suppose not, Judge.

The Court: As a matter of fact it is going to change the racial composition of the student population of Greenville County, which let's call it what it is, that is one of the problems in segregating schools, isn't it?

The Witness: Yes, sir.

The Court: All right.

Thank you.

*By Mr. Warriner:*

Q. Mr. Lankford, if the city forms its own school [157] system will there be more teachers under contract to the county than the county needs? A. Yes, sir.

*E. V. Lankford—for Plaintiffs—Cross*

Q. Would it be a benefit or a detriment to the county to relieve them of the obligation of paying those teachers' salaries? A. Financially I certainly feel it would be beneficial.

Q. If the city forms a school system will the county have more school buildings than they need? A. I assume that they will.

Q. Would it be a benefit or a detriment to the county to relieve them of the obligation of maintaining those school buildings? A. It would be a benefit.

The Court: These are all subject to the teachers agreeing to have their contracts abrogated?

The Witness: That is correct.

The Court: But it could be a detriment if the teacher said, "You hired me and you are going to pay me"?

The Witness: That is true, yes, sir.

*By Mr. Warriner:*

Q. Do you have any reason to believe that there would [158] be a substantial number of teachers, in fact any teachers who would say, "You hired me, you pay me. I am going to stay here whether you need me or not." Do you have any reason to believe there would be teachers that would behave that way? A. No, sir. Now, I am not on the County School Board.

Q. You know teachers and you know people. Do you think people would behave that way in your city of Emporia? A. No, sir.

The Court: Well, your city then is different than the county, I take it. The county hasn't treated you fairly. Do you feel that way?



*E. V. Lankford—for Plaintiffs—Cross*

The Witness: Pardon?

The Court: Do you feel the county has not treated the city fairly?

The Witness: Yes, sir.

The Court: Do you think folks in Emporia are different than the folks in Greenville County?

The Witness: They are all human beings. They may act differently on occasions.

*By Mr. Warriner:*

Q. Now, I want to know, sir, what adverse effect, what adverse effect are you talking about when you say that [159] there would be an adverse effect on the county? A. I don't know that I could answer that. The adverse effect. The question to which I answered that this would be an adverse effect I would like to have repeated if possible.

Q. It can be repeated. The Judge asked you whether it would have an adverse effect or a detrimental effect and you agreed with him. I want to know what are the adverse effects? A. Well, as you have pointed out if the county has a surplus of school teachers and these teachers are willing to terminate their contract to come to the city then there would be no adverse effect insofar as teachers are concerned.

If the county has a surplus of buildings and the buildings are no longer needed by the county and the city is willing to assume those buildings, that is no adverse effect.

Q. Leaving out the ifs, will the county have a surplus of teachers and will the county have a surplus of buildings? A. In my opinion, yes, sir.

Q. All right, sir.

Then you would have no adverse effect on the county?

A. No, sir.



*E. V. Lankford—for Plaintiffs—Cross*

[160] Q. What would there be unneighborly about your act? I assume that we all mean the same thing by "unneighborly." A. I am not sure. I don't know.

The Court: He means do unto others as you would hope they would not do unto you.

*By Mr. Warriner:*

Q. I want you to, if there is anything that is unneighborly to the County of Greenville, I want you to state it.

A. The only adverse effect as asked by His Honor, the Judge, would be the racial ratio remaining in the county.

Q. Now, at the present time I believe you testified that the ratio is approximately 60-40 in the county? A. Yes, sir, to my knowledge that is about right.

Q. And if the city formed the city school system your testimony is it would be approximately 50-50? A. Approximately.

Q. In the city? A. Yes, sir.

Q. Is this a matter of great moment to the City of Emporia? A. No, sir.

Q. Is that the motivating influence of the City of [161] A. No, sir.

Q. Did you or anyone in the City of Emporia create the racial mix that exists in Emporia and Greenville? A. No, sir.

The Court: What you are really saying, Mr. Lankford, everybody has been at you, the Council and myself and I don't mean to, but I want to get it straight. What you are really saying is that the reason that precipitated this, and the primary reason, is the fact that your children and all the chil-

*E. V. Lankford—for Plaintiffs—Cross*

Children have got to transfer schools more frequently than they have in the past and you consider that to be bad?

The Witness: I consider that to be bad, yes, sir, and the—

The Court: I am certainly in accord with you that it is not the best thing, but that is really the reason, is it not?

The Witness: That is the basic reason that we wish to operate our city school.

*By Mr. Warriner:*

Q. Well, what are some of the other reasons? A. The economies that would result from the lack of transportation necessity would certainly allow us to afford a better quality of education with more teachers and guidance [162] counsellors, etc.

Q. Do you have, Mr. Lankford, have confidence in the ability of the county government successfully to operate a unitary school system? A. No, sir, I do not. Successfully.

Q. Of course you understand that they are going to comply with the order and obey the law? A. City?

Q. The city. Your contention is then that operating in southside Virginia in the City of Emporia and the County of Greensville a unitary school system requires something more than mere obedience to the law? A. Yes, sir.

Q. What are some of the other things it requires? A. I would think a firm leadership is required.

Q. Do you think the county has firm leadership toward creating a unitary school system? A. I do not.

Q. Do you think the city has? A. I do.

Q. Go ahead, sir. A. It will have the people.

*E. V. Lankford—for Plaintiffs—Cross*

Q. Do you think the people in the county of Emporia [163] have the will to create a unitary school system? A. You mean the city?

Q. Do you think the people in the county have the will you deem necessary to create a successful unitary school system? A. No, sir, not to the extent that in the city exists.

Q. Sir? A. Not to the extent that it will in the city.

Q. Do you think the people in the city have the will to create a successful unitary school system? A. That has been demonstrated with comments to me and others, yes, sir.

Q. Go ahead, sir. A. That is all. I think they do.

Q. Are there any other reasons why you want to tell the Court why, or whether or not you want to tell the Court why the City of Emporia believes that it is in the better interests of the children in the City of Emporia to have a unitary non-racial school system in the City of Emporia?

A. The consolidation, as the Judge mentioned. The unitary system. The betterment of educational opportunity due to economies that will be a result of our school system is what [164] I have to say.

Q. Do you have any opinion as to whether the citizens of the City of Emporia would be more willing to subject themselves to higher taxes for the use of the schools than might be true in the county? A. Yes, sir, I think that is a definite possibility.

Q. Now, the Court mentioned that there were certain ifs, or that this was an iffy situation. Can those ifs be resolved here today? A. I would think so, yes, sir.

Q. How would they be resolved? A. It has been expressed by those officials of the county that they are unwilling to release any buildings that are currently included

*E. V. Lankford—for Plaintiffs—Cross*

within the Federal Court ordered plan. If such a plan can be revised to include the placement or the assignment of the county pupils to certain buildings then we feel that the county will then be in a position to allow the buildings that we want to utilize to be used by us.

Q. In other words, if the Court were to enter an order today denying injunctive relief and giving leave to the county to file a plan which would use these schools located in the county or leave at least the two schools that are needed by the city free for use by the city, if negotiations could be [165] successfully reached then do you see any reason why you would not be able to proceed to have a school system in the City of Emporia starting operations some time by the first of October? A. I see no reason, sir.

Q. In other words, all of the ifs hinge actually on the action of the Court here today? A. Apparently so, yes, sir.

The Court: When is school scheduled to start now, Mr. Lankford?

The Witness: The county school system?

The Court: Yes, sir.

The Witness: I believe it is the day after Labor Day. The third of September, I believe.

*By Mr. Warriner:*

Q. You could have your school operating then within two or three weeks after that? A. I would certainly think so, which will allow us sufficient time for the state required 180 days of education.

Q. To get 180 days of education in before the middle of next summer? A. Before the hot weather anyway, yes, sir.

*E. V. Lankford—for Plaintiffs—Cross*

Q. And if the Court enters that order today do you have any question in your mind that you could obtain the [166] teachers necessary? A. I do not.

Q. You are familiar with the people involved? A. Yes, sir.

Q. How big is Emporia? A. Population-wise approximately 6,000, I would say.

Q. Do you know most all of those people? A. I feel I have lived there all of my life and I don't know them, but they know me or I think I do.

Q. Do you believe that you know most or all of the teachers in the Emporia school system, black and white? A. I probably don't know as many black as I do white. I know most of the white teachers.

Q. Do you know a substantial number of the black? A. I know several of the black ones, yes, sir.

Q. Do you have any reason to believe that they would, if in covering that again, could you sit here today and set a reasonable date for the commencement of school provided you get an order from the Court permitting the City of Emporia to operate a city school system? A. Once that Court order is established our only time element between would be, as I see it, a teacher contract which, as expressed by the superintendent, has a 15-day [167] termination clause. So that there would be at least 15 days before a new contract.

The Court: What do you mean 15 days' termination? You mean by mutual agreement?

The Witness: Yes, sir, as I understand it, sir.

The Court: All right.

Rather than 30 days. I think it was 30 days last year and it is 15 days this year, possibly.



*E. V. Lankford—for Plaintiffs—Cross*

*By Mr. Warriner:*

Q. Have you had any indication from any teachers that they would be willing to transfer to the Emporia city school system provided they were released from their contract? A. I have, sir.

Q. You know that you are charged under the statute with the responsibility of operating the city school system and to a large extent they will be a success or a failure depending upon whether or not you discharge your duty. Are you confident that you and your School Board, if given leave to do so by the Court, can operate an efficient, effective city school system for the City of Emporia commencing in the fall of '69? A. I am confident of that, sir.

Q. Thank you.

[168] The Court: Gentlemen, any further examination of Mr. Lankford?

Mr. Marsh: No. We have no examination.

The Court: Thank you, Mr. Lankford. You may step down, sir.

(The witness stood aside.)

Mr. Marsh: Your Honor, the plaintiffs rest.

The Court: Very well.

Do you have any evidence, gentlemen?

Mr. Warriner: Wouldn't you pardon us one second.

The Court: If it would make it easier I could recess for lunch at this time while you formulate your plans. I will be glad to accommodate you. We will recess for one hour for lunch.

(A recess was taken at 12:25.)

*George F. Lee—for Defendants—Direct*

Mr. Warriner: If Your Honor please, we would like to call Mayor Lee as the respondents' witness.

The Court: Come around, Mr. Lee, please, sir. You are still under oath.

GEORGE F. LEE resumed the stand and testified further as follows:

*Direct Examination by Mr. Warriner:*

**[169] Q.** Mayor Lee, under the presently existing system would you state whether or not the city government or the citizens of the city have any control over the operation of the school system to which their children would be sent?

A. Absolutely none. May I add to this, sir?

The Court: All right, sir.

The Witness: This is a problem. We have no control over the curriculum and no control over how the program is going to operate. We have no control over the hiring of the teachers. Absolutely no control whatsoever.

*By Mr. Warriner:*

Q. Do you have any control in the selection of the members of the Board of Supervisors? A. Absolutely none.

Q. Do you have any control over the selection of the members of the School Board? A. No, sir.

Q. Do you have any control over the setting of the tax levy? A. No, sir.

Q. Do you have any control over the setting of the school budget? A. None whatsoever. In fact we pay our bill to the **[170]** county and not to the School Board itself. We

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assume it goes, some of it goes for schools, but, of course, a portion goes for our share of health, welfare, etc. But we have no control. We have a blanket bill from the county.

Q. Now, completely aside from the question of whether or not you have any legal control or opportunity to be heard, just a minute and I will revise that. I use the word "control." I will go back and say, "Do you have any vote in any of these matters?" A. We can't even vote for the members of the Board of Supervisors.

Q. Can you vote on any of the other matters I have enumerated? A. Absolutely no control whatsoever.

Q. Completely aside from your opportunity to, vote or exercise any control or influence, do you have over and beyond political lines of command, do you have any influence that you can exert over the operation of the schools by the county? A. None whatsoever. Unfortunately we do not have a line of communication from the County Board of Supervisors. In fact we had a reassessment this past year and we attempted to go over, since we are a city of the second class and we did [171] not have the records and the land books. We attempted to go over and send our crew to get those records. We were refused by the Commission of Revenue and had to get a Court order from the Attorney General in order to get public records. This is the line of communication we have, which is available to anybody.

Q. But was not made available to the city? A. No, sir.

Q. Is there an active atmosphere of antagonism between the county government and the city government? A. Absolutely.

Q. How long has this persisted? A. This has been going on for the past eight years, I would say, unfortunately.

Q. That has hampered the city government and before that the town government in attempting to exert a beneficial

*George F. Lee—for Defendants—Direct*

influence on the county government? A. Yes, sir, it has very definitely:

Q. I will leave out the word "beneficial influence." Has it had any influence on the county government? A. Yes, sir. There is no line of communication, unfortunately.

Q. Now, Mr. Mayor, all of these things were true on [172] the 24th of June as well as on the 26th of June, is that not correct? A. Yes, sir.

Q. Now, would you explain to His Honor why the fact that there was an order entered in this case between the County School Board and the N.A.A.C.P., why that acted as an agency which moved?

The Court: Wait a minute. Let me get this straight. What is this N.A.A.C.P.? They are not parties to this suit as far as I know. All I know about the N.A.A.C.P. is something that I read in the paper, frankly.

Mr. Warriner: There are large numbers of names of people and it is our understanding that their counsel are employed by some legal defense fund of the N.A.A.C.P. and it is a shorthand way of saying the whole bunch of names.

The Court: What is the materiality of it? I want to get it straight because I did read something about this Court approving the plan of the N.A.A.C.P. If they are parties, I don't know it.

Mr. Warriner: The purpose of the use of the term was for identification.

The Court: Who are you attempting to identify?

Mr. Warriner: Identifying the suit between [173] certain people starting off with a Miss Pecola Annette Wright.

*George F. Lee—for Defendants—Direct*

The Court: You mean between the plaintiffs and the defendants?

Mr. Warriner: That is correct.

The Court: All right.

Mr. Warriner: That is certainly—

The Court: I don't think it is material one way or the other, but I heard something about N.A.A.C.P. and I wanted the record to show this Court doesn't know anything about it.

Mr. Marsh: N.A.A.C.P. is not a party to this.

The Court: I didn't think so, but I wanted it straight for the record.

All right, sir.

*By Mr. Warriner:*

Q. Between the plaintiffs and the defendants, who are Miss Pecola Annette Wright and the County School Board, what was it about the order that was entered that changed the situation which galvanized the city into action? A. Which order are you talking about, Mr. Warriner? The first order or the second order?

Q. The order entered on the 25th of June, I think it was.  
[174] A. Is that the first one or the second one?

Q. Maybe I better check it.

It was the order that was filed with the supplemental complaint.

Mr. Tucker: June 25.

The Court: Isn't that the order that approved the plan submitted by the Greenville County School Board?

Mr. Warriner: If Your Honor pleases, as I understand it I assume Your Honor is asking, as I under-



*George F. Lee—for Defendants—Direct*

stand the Greenville County School Board merely made some physical rearrangemnts of the order that was submitted or directed by the Court in order to accommodate children to classrooms and—

The Court: That may have been the result, but weren't we in court when they appeared here and asked the Court to approve their plan, which this Court did? And that was done on June 25. That is the plan, as I understand it, that was submitted by the School Board. Is that correct, Mr. Kay?

Mr. Kay: It would appear to me from this Court having considered the proposed plan filed by the plaintiffs here and being of the opinion that the same will lead to a unitary system—

The Court: That is the order of the 25th?

Mr. Gray: That is the plaintiffs' plan.

[175] The Court: That is not the plan we are operating under now. We are operating under a plan submitted by the Greenville County School Board.

Mr. Gray: That was much later.

The Court: You are talking about the first plan, in any event, which was approved and then ultimately amended at the request of the defendants?

Mr. Warriner: I think that perhaps the best thing to do is just use the dates, the 25th of June.

The Court: I think so.

Mr. Warriner: Because it was some time shortly after the 25th of June that the city started taking action.

Now, what I want to know, was what was there about the nature of the occurrences in the suit between the plaintiffs and the defendants, and you know what suit I am referring to—

*George F. Lee—for Defendants—Direct*

The Witness: Yes, sir.

*By Mr. Warriner:*

Q. —that resulted in action being taken by the city? A. The city has never been happy with the school system period. And a member of the School Board, not the Chairman, but at the first meeting he went and informed the [176] School Board, and he is present in this courtroom today, informed the County School Board, the full County School Board in 1967 or 8, whenever he went, that he wanted to work, and he was going to make efforts to make a separate system. We have never been happy with the system, but our children were going to school, all of our children in close proximity to where they lived. And this is what precipitated this action because now with this transportation problem and two or three buses picking up children—

The Court: You mean none of the children in Emporia went out into the county to school?

The Witness: Yes, sir, some did. Yes, sir, but this was—we are talking about, sir, less than a mile.

*By Mr. Warriner:*

Q. Mr. Mayor, the R. R. Moton, the high school which was formerly an all-Negro school, is located on the very edge of Emporia to the north, is that correct? A. Yes, sir.

Q. But outside? A. Yes, sir.

Q. And the other high school which is the Greenville County High School, which was a formerly all-white school, is located on the very edge of Emporia to the south but inside? [177] A. Well, in fact part of the playground is in the county.

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Q. And so far as their proximity to the center of Emporia, there is practically no difference? A. Very little.

Q. And if any children, I think perhaps emphasis was made, that there may have been some Negro children who traveled outside of the city to school. If they did it was on the immediate edge of the city to the high school? A. I would assume that, yes, sir.

Q. During the course of the examination and cross-examination, Mr. Mayor, there have been a number of reasons stated to the Court why the city would be better off having its own city school system and its children would be better off. I take it from your answer then that all of these reasons apply and the precipitating act was the fact that the schooling was being fragmented into groups of two and three grades in a school building requiring excessive transportation of city children, is that correct? A. That is correct. And if the Judge would allow me to elaborate and present an example.

The Court: Go ahead, sir.

The Witness: You will take for instance we have [178] in Emporia and Greensville County an excellent band program. If we had all of the children between the ages of school ages of first grade through seventh grade in one school then we can have one band director, for instance, and he can direct each one of those children. They have a little band. He can direct each one of these children and we can have an excellent band program. I use that as one item. But if he is, that one man, we have to have five to go from school to school to school just to have this extracurricula type of thing. And I think this is why we need to keep all of the children

*George F. Lee—for Defendants—Direct*

in the city together. And then we can have expanded programs that we don't presently enjoy. And we have had no voice whatsoever in the programs that have existed in the past.

*By Mr. Warriner:*

Q. I assume, Mr. Mayor, that you read the newspaper?

A. Yes, sir.

Q. And that you were aware one plan after another and various modifications of these various and sundry plans were being presented to the Court in this case according, at least, to the newspapers? A. Yes, sir.

The Court: But we already know they are not [179] accurate because they said something about N.A.A.C.P. and I saw that, and that is not true. Don't hold this witness to the newspapers' responsibilities. Don't hold him responsible.

The Witness: No, sir.

Mr. Warriner: I don't intend to, Your Honor.

The Witness: Thank you, sir.

*By Mr. Warriner:*

Q. I ask whether or not you read it? A. Yes, sir, I read them all.

Q. Was it also your understanding from a reading of the newspaper that the Court finally finished up with a plan that was a final plan? A. Yes, sir.

Q. Were you aware of the fact that the Court always reserves the right to change an order? A. No, sir. This was a surprise to me. No, sir.

Q. Did you have any reason after the reading of the history of the case as it went through court to believe that

*George F. Lee—for Defendants—Direct*

after finally deciding on this order that the Court was going to change it? A. No, sir, I had none whatsoever.

Q. Were you required then to act upon the facts in behalf of the City of Emporia as they existed and as they [180] appeared to you? A. Absolutely.

Q. Is that the reason— A. That is absolutely.

Q. —or the basis upon which the Council acted as far as you know? A. I thought this was the final and complete action and couldn't be changed.

Q. Are you asking the Court now to change it in order for the City of Emporia to have a school system? A. Your Honor, I am pleading with the Court. If I can elaborate again.

The Court: Mr. Lee, let me say that I don't want to cut you off and I am going to let you do it.

The Witness: All right.

The Court: I am sure what you are saying you are perfectly sincere in.

The Witness: Yes, sir.

The Court: Let's call a spade a spade.

The Witness: All right, sir.

The Court: It is a little late. That is the problem. It took me from August until about a month ago to even get the Superintendent of Schools of your division to [181] submit a plan.

The Witness: But, Your Honor, sir, we didn't have any control over that. None whatsoever.

The Court: I know that.

The Witness: Never have we been asked or consulted on a plan.

The Court: Go ahead, sir.

The Witness: All right, sir.



*George F. Lee—for Defendants—Direct*

The Court: I didn't mean to interrupt. I wanted to let you know what the problem was.

The Witness: I am concerned first of all with the public school system, and this is the only answer. We can't go back to the dark ages. This is not a threat from me because I would never allow my child to attend one period, regardless of the outcome of this case or any other case. But I am thinking further. It has been quoted in the papers, correct here, our area is a growth area in southside and we have been getting big industry there and we think this school turmoil has so frustrated things that it is going to hurt us economically. We are going to be a dying community. But if we can have a dynamic system, school system in the City of Emporia, we are going to continue to grow and move.

I don't think this is going to hurt the county one [182] bit any more than the present plan is going to hurt the county. I don't think it will affect the county because we have got to consider right down, when you talk these things over, there is a fact that there are several hundred, I don't know how many, and it may be 100 or 200 county white children that are being bussed out to Brunswick County to go to a private academy, which I am against, but this thing, if we are not allowed to have at least one system in Greenville County for all of the citizens to go to it is going to hurt Greenville County as well as Emporia. And I don't think this plan that we are proposing will affect adversely the County of Greenville and it can be put into effect next month, Your Honor, sir, with your approval, sir.

*George F. Lee—for Defendants—Cross**Cross-Examination by Mr. Tucker:*

Q. Mayor Lee, do you know Mr. Dolphus Slate, one of the members of the Greenville County School Board? A. Yes, sir.

Q. Where does he live? A. He lives on Church Street, I believe.

Q. In the city? A. Yes, sir.

Q. Mr. Temple, another member, where does he live? [183] A. He lives in the Town of Jarrett, I believe.

Q. J. D. Adams, a member of the County School Board? A. He lives in the city.

Q. Mr. Vincent? A. Mr. Vincent lives in Skippers.

Q. Two of the four members of the County School Board live within the City of Emporia? A. Yes, sir.

Q. Do you know who the members of the School Trustee Electoral Board are? A. I don't any more. I sure don't, no, sir.

Q. All right.

Now, you testified that Wyatt was on the very edge of the town limits. Wyatt is about half to three-quarters of a mile north of the town limits? A. Yes, sir, I would say close.

Q. It is easily? A. I say half a mile.

Q. Half a mile? A. Yes, sir.

Q. Negro children living in Emporia in the southside of Emporia? A. Yes, sir.

[184] Q. Who did not elect under freedom of choice to attend the Emporia Elementary School were assigned to school where, if you know? A. I really don't know because we have had no control whatsoever over those matters.

Q. As Mayor of the city you never concerned yourself as to where the Negro children in the southside of Emporia

*George F. Lee—for Defendants—Cross*

attended school, whether they attended Zion or Moton School or Belfield School? A. Yes, sir, I have been concerned with the white and black children in Emporia ever since I have been Mayor.

Q. But you don't know where the Negro— A. I am sure they go to the Greenville Training School. Those that did not elect to go to the Greenville Elementary School.

Q. Elementary school? A. Yes, sir.

Q. How about the Negro children that attended or lived in the south part of the city, attended Zion School or Belfield School? A. Oh, I am sure some did, but again—

Q. I meant Zion School or Moton. A. Moton School, yes, sir. Certainly they did attend [185] right. It was in close proximity to areas of residence, so I am sure they attended those schools.

Q. I see.

Now, you elaborated upon an advantage of having the children of the city all in one building. And you made reference to the band. Your idea would contemplate two high schools, one for the city and one for the county. Two high schools for the area? A. Definitely.

Q. But both those high schools would be very small population-wise? A. Well, no, sir. I don't think so, sir.

Q. At least if they were together there would be a larger population in the high school? A. Well, actually, sir, if they were together they couldn't accommodate the students. The schools were built only for approximately 800 and you would have 600 in them. So that takes care of future growth.

Q. That is all right.

I noticed in the minutes of the City Council minutes of your last meeting, the matter came up with the residents of the Virginia Lee Baker subdivision seeking annexation into the city and Virginia Lee Baker subdivision is [186] located south of the city? A. Yes, sir.

*George F. Lee—for Defendants—Cross*

Q. Tell me whether that is populated by white or Negroes? A. There are three homes, Negroes—I mean white homes. Three homes in the area.

Q. Three homes in the area? A. Just three, yes, sir.

Q. Then there is a new subdivision being developed, is that what it is? A. Yes, sir. I don't think many lots have been sold.

Q. I notice that they are referred to as acreage. A. I think around 47.

Q. As a resident of the city do you know whether lots in that subdivision are being offered to sale to Negro people?

Mr. Warriner: If Your Honor please, the law requires they be offered to sale to anyone without regard to race, and I am sure counsel knows that.

The Court: Objection overruled.

*By Mr. Tucker:*

Q. As a matter of fact— A. I have no idea.

Q. —do you know who is selling them? Who is [187] promoting it? A. I know the attorney that handles the case, but that is the fact, something that has never come up as far as I am concerned. So I could not answer that.

Q. All right.

Now, I am assuming that in the several steps that the Council has made you have had advice of counsel? A. Yes, sir.

Q. Now, did your counsel advise you that the Court ordered plans to be revised and so forth as time went along?

Mr. Warriner: I think it would be properly objectionable as to what counsel advised them.

*George F. Lee—for Defendants—Cross*

The Court: I think that objection is well taken.

Mr. Tucker: I withdraw the question.

*By Mr. Tucker:*

Q. The minutes of the Council and the registration notice that was published by the School Board within recent days both refer to the fact that out of the city students may attend the city schools on a tuition basis. Do you know what the amount of tuition will be? A. It has been calculated based on the budget we received from the County School Board or from the county, rather, approximately. If any child decided to come in I would [188] say approximation of \$170 a year.

Q. Both elementary and high school children? A. Yes, sir.

Q. Now, I believe you testified, and correct me if I am wrong— A. All right, sir.

Q. —that if the two buildings that the city wants, the school buildings that the city wants could be released that the County Board would cooperate, or that you would have no difficulties or foresee any difficulties in establishing the school system. A. I don't believe we will have any difficulties at all with the County School Board. Unfortunately the Board of Supervisors don't realize that the Board controls the property. If the Court releases them we wouldn't have any problem at all working that out with the County School Board.

Q. Who would make the decision, let us say, for instance as to what teachers would go to the city and what teachers would go to the county system? A. Then I think here, as I have said repeatedly, it would be a complete unitary system. Then our City School Board then would be empowered to hire.



*George F. Lee—for Defendants—Cross*

Q. You don't understand me. [189] A. All right, sir.

Q. I am conceiving of the teachers presently under contract by the County School Board as being the pool from which the county teachers and the city teachers would be drawn. A. Yes, sir.

Q. I am asking you how would the decision be made as to which teachers would go to the city system and which would remain in the county? A. Two School Boards to have to go together and decide.

Q. Have you assurances from the County School Board they would get together? A. Tacit approval, yes, sir. I don't think we would have any problem.

Q. What do you mean "tacit"? Do you mean you have talked with members of the County School Board on the subject? A. I have talked with the County Superintendent on the subject and I have talked with one member of the School Board on the subject. I don't think that would be a problem at all, sir.

Q. What member of the School Board did you talk to? A. Talked with Dr. Adams.

Q. And your conversation with Dr. Adams led you to [190] believe there would be no difficulty at all in apportioning teachers between the county and the city? A. Yes, sir.

Q. All right.

May I venture to guess that you agreed that Mr. Wood would be able to make the selection and both Boards would ratify his selection? A. Yes, sir.

Q. That is your understanding of the way it would work out? A. Yes, sir. I think you would have to take it on a complete non-racial basis, and I am sure our School Board, and I am sure the county would take that recommendation with, of course, some suggestion.

*George F. Lee—for Defendants—Cross*

The Court: If you got along so good with the School Board why didn't you go and help them make a plan and make suggestions to them?

The Witness: Yes, Your Honor, sir, we have been dealing and we don't even send our check to the School Board.

The Court: But you talked to Dr. Adams and have tentatively agreed that you will get the teachers you need from what you said?

The Witness: Yes, sir.

[191] The Court: What I don't understand is why didn't your School Board, Emporia, sit down and talk to Dr. Adams and the other members and say that you wanted to talk to them about this plan that was being submitted to the Court?

The Witness: Frankly, Your Honor, sir, they have never been instructed by the Council to do so and I think the School Board is not at fault. I think the Council is at fault, but we weren't happy with the system we had. We were living with it, but I don't think the School Board is at fault.

The Court: What I don't understand is that you all haven't done anything all this time and now all of a sudden in a matter of days you want this Court to disrupt the plan that has taken—it was like pulling teeth—

The Witness: Yes, sir.

The Court: —to get it out of Greenville County School Board.

The Witness: Yes, sir.

The Court: And you want us to take it now and run the risk of injuring the children of Greenville County in their education.

D

*George F. Lee—for Defendants—Cross*

The Witness: I don't believe, sir, that as the superintendent stated—excuse me, maybe I shouldn't say that.

The Court: Go ahead. Isn't that what you are [192] asking this Court to do?

The Witness: Yes, sir, but I don't think it is going to injure the system. As the superintendent stated it is a matter of half a day since he already has your pairing plan and it has been agreed upon there is no problem.

The Court: Let's get it straight. It is not my pairing plan. It is the plan submitted by the Greenville County School Board.

The Witness: Yes, sir, excuse me, sir.

The Court: I mean I will take credit and blame, and it is there.

The Witness: Yes, sir.

The Court: But I want it straight that this Court approves the School Board plans whenever it is possible to do it.

The Witness: Yes, sir.

The Court: Because they now presumably know more about it than I do.

The Witness: This can be handled and our children won't have to go to school, white and black, with so far away from home. They can be close to their families. This is all we are asking, without harm—any harm to the county whatsoever. And the superintendent stated—

[193] The Court: You state there is no harm, but Mr. Lankford thinks there will be harm.

The Witness: I disagree with Mr. Lankford.

*George F. Lee—for Defendants—Cross.*

The Court: Between you and I, I do too. Go ahead.

The Witness: All right. I don't think—I mean what is the difference between 60-40 and 50-50 ratio? What is the difference? There is none. We have never talked about the race. There is no race involved.

The Court: I am not thinking about the race situation.

The Witness: I don't think that plan, our plan, will do any harm. If there is any harm to be done any more than is already done then the present plan will do.

The Court: All right, sir.

*By Mr. Tucker:*

Q. I assume this conversation with Dr. Adams took place after the Council's action in July of this year, or determination in July of this year to form a separate school system? A. Frankly I am sure it was. It was an off-the-cuff type of thing and, of course, it was my saying, I don't know whether I mentioned it to another member of the School Board or [194] not, "If we could just get those city school buildings we could operate a plan with no problem."

And they said, that under this Court order maybe it has been since that they were negotiating or having plans back and forth, presenting it in the meeting with the Courts, and there is nothing they could do, really. Their hands were tied until something had been done. It is an off-the-cuff type of statement that I couldn't answer, really.

Q. Well, July 9 was the first special meeting that the Council had at which you announced the purpose of the

*George F. Lee—for Defendants—Cross*

meeting was for, "Establishing a city school system"? A. Yes, sir.

Q. And you have had several meetings subsequent? A. Yes, sir, we sure have.

Q. Now, what I am saying is that this conversation you had with Dr. Adams was some time after this July 9 meeting? A. I really couldn't say about that and I have no assurance. I couldn't assure you, if this is what you are saying, we would get those school buildings, but I have enough confidence in all of the members of the School Board that if it is agreeable that we can operate our city school system and we would have no problem getting the School Board because the superintendent said there would be surplus property.

[195] Q. You are not suggesting that before you took the matter to the Council on July 9 with the purpose of establishing a city school system that you talked this over with Dr. Adams before you talked it over with Council? A. No, sir.

Q. So your conversation with Dr. Adams had to be after? A. I am sure of that, yes, sir.

Q. Sure.

Now, have you talked with any of the other County School Board members since July 9? A. No, sir. I can't tell you—we have had several meetings with the Chairman of the Board of Supervisors. These were informal meetings. The Commonwealth's Attorney, a couple members of the Board of Supervisors, excuse me, the Chairman of the School Board, the superintendent, our attorney, and myself.

Q. Chairman of the County School Board? A. Yes, sir.

Q. Mr. Slate? A. Yes, sir.

Q. So you have had a meeting with him? A. We have had meetings, and may I ask my attorney when those meet-



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ings were? We met in Vincent's office to try to [196] get them to present a plan that would be helpful.

Mr. Warriner: You may ask, but I can't answer.

The Court: You can answer in argument if you wish, Mr. Warriner.

The Witness: Excuse me. I am sorry, sir.

*By Mr. Tucker:*

Q. Let me ask you, was that meeting at which Mr. Slate was present before or after July 9, when you called the special, first special meeting of the Council for the purpose of establishing a school system? A. I honestly cannot answer.

Q. All right.

Well, at this meeting of which Mr. Slate was present was there discussed your formation or a proposed formation of a separate school? A. Yes, sir.

Q. Can we say that that was within a month, one way or the other, of July 9? A. Yes, sir, I would say so, yes, sir.

Q. Well, can we say it was before or after June 17 when this Court—when the District Court here announced that it was going to approve the plaintiffs' plan? A. I believe that would be correct, sir. Yes, sir.

[197] Q. What would be correct? A. That it would be after.

Q. It was after that? A. Yes, sir, I would say that.

Q. Now, I suppose you read in the newspaper on June 18 that the Court had announced it was going to approve the plaintiffs' plan? A. You are tying me down to dates, sir. But it was prior.

Q. You read that in the newspaper? A. Yes, sir.

*George F. Lee—for Defendants—Redirect*

Q. So it was after your reading in the newspaper that the Court had announced from the Bench it was going to approve the plaintiffs' plan that you had this meeting at which Mr. Slate was present? A. It was an informal meeting in Mr. Vincent's office.

Q. Will you just run over what other things have been discussed between you and Mr. Slate, you and Dr. Adams, you and other members of the School Board which is the basis of your testifying that if the matter of the buildings could be solved that you would have no other problems in establishing a school system? [198] A. Well, this is the whole sum and substance of that particular meeting. And I reported back to the Council after that meeting that members of the Board of Supervisors were there and in fact the Chairman of the Board of Supervisors was at that meeting, and this is what I was instructed by the Council to go and propose that when their finalized plan came in to establish or to put all the city children in the city and have a pairing plan for the county for the rest, just what we are asking for today. And it didn't get done.

Q. In other words, the city, is it fair to say, that in an informal manner the result of your conversation with members of the School Board, specifically Mr. Slate and Dr. Adams, that you had been given the understanding that if you can get the matter of the buildings solved that the rest of it could be worked out? Is that a fair summation? A. I think so, yes, sir. All right, I would say that, yes, sir.

Mr. Tucker: Nothing further.

*Redirect Examination by Mr. Warriner:*

Q. Mr. Lee, are you led to believe from what you have heard in conversation and gatherings and so forth that that

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is a unanimous view from the part of the School Board and [199] Board of Supervisors? A. No, sir, no official action whatsoever.

Q. Is it a unanimous viewpoint that the city can have the schools or are there those that say the city will have the schools over their dead bodies and so forth? A. That is correct. And we have heard it to be a fact that we will not, that we have no equity in the schools.

Q. Now, is your opinion that as a practical matter you will get the schools based upon a feeling that exists, a great deal of good will and comity between the two governments or as a practical matter that they don't have any use? A. I think it is because they don't have any use for the schools, yes, sir.

Q. And with respect to the teachers, is it because they love you and they will give you teachers or they won't have any use and can't afford them to do nothing? A. No, sir. And frankly the teachers would rather teach in our system because they know it is going to be a better one.

The Court: It is the same superintendent, isn't it?

The Witness: Yes, sir, but we will have a School Board also.

**[200] By Mr. Warriner:**

Q. Will this School Board be under the complete control of the citizens of Emporia, their government and their School Board? A. Yes, sir.

Q. How is the School Board in the city selected? A. They were selected by the City Council.

Q. How is the School Board of the County of Greenville selected? A. I believe by a trustee appointed by the Court.

Q. Pretty far removed from the people, then? A. Yes, sir.

*Colloquy*

The Court: You wouldn't think so if you saw my mail.

Mr. Warriner: Sir?

The Court: You wouldn't think Courts were so far removed if you saw my mail.

Mr. Warriner: No.

The Circuit Court, the statute says, if Your Honor please, that the General Assembly elect the judges and the judges select the school trustee, the Electoral Board and the school trustee, and the Electoral Board select the School Board, and if you can get the people in that it is a long reach. [201] Of course we hope to change that.

The Court: Any other examination of the witness, gentlemen?

Thank you, sir.

(The witness stood aside.)

The Court: Call your next witness, gentlemen.

Mr. Warriner: We rest, if Your Honor please.

The Court: Do you wish to put on any evidence, Mr. Gray?

Mr. Gray: We have no witnesses, Your Honor.

The Court: Gentlemen, any rebuttal?

Mr. Marsh: We have no rebuttal evidence, Your Honor.

The Court: I will be glad to hear from you, gentlemen.

(Mr. Tucker made a closing statement to the Court.)

(Mr. Warriner made a closing statement to the Court.)

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(Mr. Gray made a closing statement to the Court.)

(Mr. Marsh made a closing statement to the Court.)

(A recess was taken at 2:55 to reconvene at 3:30.)

**[202]** The Court: Gentlemen, this matter is of such urgency that I think the Court ought to give its findings from the Bench so that everybody will know what the situation is, reserving the right to correct my grammatical errors and add citations that I deem appropriate.

I am going to try to make it as brief as I can, reserving the right to expand my findings and my conclusions of law. This will be brief so that if anybody is unhappy they can get it written up and go from here as quickly as they can. I will cooperate with anybody to that extent.

This matter comes before the Court today by virtue of an announced intention by the School Board of the City of Emporia who have been made additional parties to this suit to operate for the first time their own school system within the City of Emporia.

The Court adopts and takes judicial notice of its previous findings of fact and conclusions of law in this case and points out that this matter has been pending since 1965.

In June or July of 1968 the instant plaintiffs moved the Court for further relief. A hearing was had in connection therewith and in spite of the fact that everybody knew that the schools of Greensville County, which included the City of Emporia, that those were physically located in the City **[203]** of Emporia were operated by the then defendants who have to operate them in a unitary manner. At the behest of the original defendants the School Board



*Oral Decision*

of Greenville County and in view of their statement which was made as a matter of fact exactly one year from today, and I quote, "In view of the short period of time remaining before the opening of the schools reorganization of the system for 68-69 school year is virtually impossible administratively and would be disruptive and detrimental to the education program of the pupils." This Court extended the time for the filing of a plan and directed, as a matter of fact gave them until January 20. Even then that wasn't sufficient time, according to the then defendants. So they asked for an extension until January 31.

In short it was not until June of this year that a hearing was had on the proposed plan of operation for the schools. There had been one interim hearing in which it had been suggested that a certain testing program would be considered, and the Court heard evidence on that and gave leave for the then defendants to bring in further information.

In any event it wasn't until June that it was considered, some 10 months after the first report and some 12 or 13 months after, I believe, they were directed to file an appropriate plan or at least that they knew they would have [204] to file an appropriate plan.

Now, I mention this because the Court finds that the City School Board and the Council of the City of Emporia have known all during that period of time what was required under the law. The Court finds that they made no effort whatsoever to communicate their wishes or their desires to the County School Board of Greenville County, nor did they give the Superintendent of Schools, from the evi-

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dence before the Court, any assistance in attempting to formulate an appropriate plan.

The Court finds that after this Court's order of June 25, 1969, a meeting of the Council was held, according to the minutes contained in Plaintiffs' Exhibit 12, and the Mayor of the City of Emporia stated to the Council his opinion concerning the plan that had been approved by this Court. Without quoting him it certainly evidenced a disagreement with it.

The Court finds at that time a member of the School Board reported to Council the percentage of Negroes in each school for the first seven grades. It is apparent that therein was borne the idea that this School Board had never functioned as a School Board except for purposes of discussing with the School Board of Greenville County the salary of the [205] superintendent and selection, who had never functioned, had been created only because the law required that there be a School Board in the city, they then decided that they would operate a school.

Now, the Court finds that it has taken all this time to formulate a plan. The plan that is approved by this Court was a plan submitted by the Greenville School Board. That any disruption of same would not only enure to the detriment of the students, but would be a violation of the constitutional rights of the students of Greenville County. Education of the children must be protected.

The mere fact that there is a Board that, for all practical purposes, is a moot Board for the city and there is a county contiguous thereto, the process of desegregation ought not and cannot be thwarted by drawing a line between Emporia and Greenville County.

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It occurs to the Court that a political subdivision can be pierced to protect the pupils. It would seem appropriate, where necessary—and I don't think it is necessary under these facts at this time—that lines may be pierced to protect children's education.

The harm to the remaining students, if the Court did not issue an injunction, would be incalculable. And this [206] must be considered. See *Hobson v. Hansen* 269 F. Sup 401.

Under the New Kent decision this School Board had an obligation and a duty to take steps to see to it that a unitary system was entered into. All they have done up until now, and the Court is satisfied that while their motives may be pure, and it may be that they sincerely feel they can give a better education to the children of Emporia, they also have considered the racial balance which would be roughly 50-50 which would reduce the number of white students to, under the present plan, would attend the schools as presently being operated.

The Court finds that under *Brown v. Board of Education* 349 U.S. 294 that these defendants, all of them, have an obligation that they are going to abide by.

In short, gentlemen, I might as well say what I think it is. It is a plan to thwart the integration of schools. This Court is not going to sit idly by and permit it. I am going to look at any further action very, very carefully. I don't mind telling you that I would be much more impressed with the motives of these defendants had I found out they had been attempting to meet with the School Board of Greenville County to discuss the formation of a plan for the past year. I am not impressed when it doesn't

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happen until they have reported to [207] them the percentage of Negroes that will be in each school.

I find that if this were permitted—and not only is it not feasible and detrimental and a violation of the constitutional rights of the students, it really isn't anything. They don't have the first school teacher. They don't have a School Superintendent. They don't have the first building. They don't have the first book.

The injunction will issue.

Let there be no doubt that this injunction runs not only to the named defendants but every person within the jurisdiction of this Court that in any manner whatsoever attempts to interfere with the plans that are theretofore approved. The Court will be delighted to entertain motions for amendment of the plan at any time.

I think that covers it, gentlemen. If there are any questions or any doubt about what the Court is ruling please speak up. I will hold the motion for contempt in abeyance.

Yes, Mr. Kay.

Mr. Kay: If the Court please, I take it that the Court will set this down for hearing on the permanent injunction?

The Court: Yes, indeed.

Mr. Kay: And in the meantime I take it that the [208] Court will require a bond?

The Court: I am requiring a \$100 bond. That is what I am requiring.

Mr. Kay: You won't hear any—

The Court: What do you suggest it ought to be, Mr. Kay?

*Colloquy*

Mr. Kay: We are suggesting that considerable damage will result if the Court is in error and if this injunction stays in effect from the necessity of expending funds to transport students throughout the county which otherwise would not be necessary. And from that standpoint we think the bond should be substantially in excess of \$100.

The Court: All right, sir. Since I have no concrete evidence of that the bond will be \$100.

Mr. Kay: Now, sir, as to the date for a permanent or for a hearing on the permanent injunction. Does the Court want to set that now?

The Court: Well, I will be glad to do it. No, I don't have my next year's docket, Mr. Kay. Let me tell you. It is going to be some other Court that destroys this. Until I have a better one in front of me. I can't do it. So there is no rush for it.

This Court's injunction is going to enter today. [209] It is going to enter now as of 3:45.

Mr. Kay: Before we can determine what future course there should be perhaps we should get the record into shape that will be necessary to pursue that course. We would like to have a hearing at a reasonable prompt time. We realize that as a practical matter the Court's ruling today takes care of it.

The Court: It can be appealed in 15 minutes.

Mr. Kay: Yes, sir. But this is a temporary injunction and we want to get the record in proper form. We had very little notice.

The Court: Let the record show that I will cooperate with you so that you may appeal this, because it does go to the real issue.



*Colloquy*

Mr. Kay: Yes, sir. But if we would prepare to expand upon the record to some extent and follow the course—

The Court: All right, sir. What date do you suggest, Mr. Kay?

Mr. Kay: Well, I would hope some time in September.

The Court: No. We can't do it.

Mr. Kay: We would want the earliest date.

The Court: I doubt seriously if the Court—is [210] there any limitation on a temporary injunction, gentlemen?

Mr. Kay: There is on a restraining order.

Mr. Tucker: There is none on the injunction.

The Court: There is none. It will have to be after the first of the year for a hearing. I have got one in September that I believe you may be involved in, Mr. Kay. In any event starting in September I go into a series of cases which are rather lengthy. I start a 13-week's case in October.

Mr. Kay: We would like to pursue this in an orderly manner.

The Court: I want to give you all the time you want, but I don't see how I can do it. I must tell you I think you have had, you know, a long time to be heard. Well, Mr. Kay, I can give you a date in November, but I see here—I mean December. I have a case that if it is not finished I have it marked down here for going into the 40th day. Now, if it gets through then that is fine. We have a case here on December 15th that you are in which is supposed to take two days. Do you think that will take two days?

*Colloquy*

Mr. Kay: Yes, sir, if it is tried, which it appears it will be, it will take two days.

The Court: I can hear you December 18. How about that?

[211] Mr. Kay: If that is the earliest time then I would like to reserve that date and then we will take whatever action in the meantime that we are so advised.

The Court: All right, sir.

Mr. Kay: Keeping that date in mind.

The Court: Do you have a sketch of the injunction, Mr. Tucker?

Mr. Tucker: Well, the sketch that I passed up that Mr. Kay objected to.

The Court: I will meet with counsel in Chambers in reference to the form of it at the conclusion of this hearing.

Anything else, gentlemen?

Mr. Tucker: I would like to make one further motion. A matter of housekeeping, sir. That in the same suit, that is that Mr. Sam A. Owen should be substituted in the papers for Andrew G. Wright, Superintendent of Schools, and Billy B. Vincent should be substituted for Cary P. Flagg.

The Court: So ordered.

Mr. Warriner: If Your Honor please, a matter of housekeeping. I think that the papers might want to show George F. Lee is the Mayor and Robert F. Hutcherson and Gordon Harrison are additional councilmen not served.

[212] The Court: Thank you.

Mr. Gray: Could I inquire? Looking at the supplemental complaint there is nothing in the prayer of this complaint relating to contempt. Your Honor

*Colloquy*

said that the motion for contempt would be kept under advisement.

The Court: It was an oral motion, if nothing else.

Mr. Gray: What I want to inquire into is the scope of Your Honor's considerations, whether or not the County School Board of Greenville County is in any way subject to a inquiry as to contempt.

The Court: Yes. Yes, I will tell you now. They are. I am not so sure of informal conversations and so forth and so on, but that goes to anybody, Mr. Gray. I don't need counsel to—I am not critical, but I don't need Mr. Tucker or Mr. Marsh to suggest to the Court that anybody is under contempt if it comes to the Court's attention then I will handle it as I think I ought to.

Mr. Gray: Okay, sir.

Mr. Warriner: If Your Honor please, I don't want my clients to be before the Court and I take it my clients are free to continue what legal action they may be privileged to take.

[213] The Court: Absolutely. Just as long as it does not interfere with the operation of the plan.

Now, I am not going to tell you, certainly, how you ought to advise your clients. I just say that this plan may be amended at any time, that anybody can come in and show that there is a better way of doing it. I will be delighted to hear them. I am not going to take any steps now that is going to permit anybody to interfere with the operation of this plan, whether they are named defendants or strangers to the suit. If I have reason to believe they are interfering with it they are going to be heard, and if it is found then I am going to take the appropriate action.

. . . . .

## **District Court's Findings of Fact and Conclusions of Law**

[Filed on August 8, 1969]

This cause came on to be heard on the verified supplemental complaint and the plaintiffs' motion for an interlocutory injunction as prayed in the supplemental complaint; and having heard oral evidence and received exhibits in open court, the Court makes the following

### **FINDINGS OF FACT**

This action, seeking the racial desegregation of the public school system of Greenville County, was commenced March 15, 1965.

On July 31, 1967, the Town of Emporia became a city of the second class known as the City of Emporia.

In recognition of its obligation to provide certain services and facilities including public schools for children within its boundaries, the said City by the Council thereof on April 10, 1968 entered into and signed an agreement with the surrounding County of Greenville acting through the Board of Supervisors thereof, whereby the County would continue to provide public schools to the citizens of the City of Emporia in the same manner as when the City was a town and to the same extent as provided to the citizens of the County, and the City would pay as billed its contractual share, ascertained at 34.26 percentum, of the local cost to the County. Said agreement provides for its continuing effectiveness for a period of four years and thereafter until notice will be given by either party to the other by December 1 of any year that said agreement would be terminated on July 1 of the second year following such notice. The contract provides for other contingencies in reference to termination.

*District Court's Findings of Fact and Conclusions of Law*

On June 17, 1969, this Court stated from the bench its findings of fact and conclusions of law regarding the plaintiffs' motion for further relief and indicated that an order would be entered requiring the County School Board of Greenville County to implement the plan for desegregation filed by the plaintiffs which proposed the use of two school buildings located near but outside the City limits for all children in primary and lower elementary grades living south of the Meherrin River, the use of a school building located within the City and one located near but outside the City limits for all children in primary and lower elementary grades living north of the Meherrin River, the assignment of all pupils in intermediate grades to Emporia Elementary School located within the City of Emporia, the assignment of all pupils in the junior high school grades to Wyatt High School located near but outside the City limits, and the assignment of all pupils in the senior high school grades to Greenville County High School located within the City limits. The only two schools in the system which white children have ever attended are within the City.

On June 24, 1969, Bruce Lee Townsend, an infant, etc., et al, residents of the City of Emporia, filed in the Circuit Court of the County of Greenville a petition (which on the same day was served on the respondents thereof, viz: City Council of City of Emporia, School Board of City of Emporia, Greenville County Board of Supervisors, and Greenville County School Board) seeking, *inter alia*, judicial dissolution of the above mentioned agreement of April 10, 1968, and an injunction preventing any pupils residing within the City from being assigned to schools not located within the City. Each of the respondents demurred to said petition on July 15, 1969.

On July 9, 1969, William H. Ligon, L. R. Brothers, Jr., T. Cato Tillar, Fred A. Morgan, Julian C. Watkins, S. G. Keedwell, M. L. Nicholson, Jr., and Robert F. Hutcheson,



*District Court's Findings of Fact and Conclusions of Law*

constituting the Council of the City of Emporia; George F. Lee, Mayor of the City; D. Dortch Warriner, City Attorney; and Robert K. McCord, City Manager, convened in a special meeting, the purpose of which was for "establishing a City School system."

Under date of July 10, the Mayor sought cooperation from the County Board of Supervisors, specifically the sale or lease of the school buildings located within the City.

At the July 14 meeting of the same City officials, the Mayor evidenced his dissatisfaction with the plan which this Court had ordered to be executed to accomplish school desegregation. The Council heard purported percentages of Negroes who would be in each school for the first seven grades under the plan approved by this Court, and there was evidenced a view that the plan was educationally unsound. The chairman of the City School Board advised the Council that approximately 500 County children could attend City schools if the City obtained the buildings wanted, i.e., the Emporia Elementary School and the Greenville County High School which white children of the County and City have traditionally attended. The Council unanimously decided to instruct the School Board of the City of Emporia to immediately take all steps to establish a school division for the City of Emporia.

At a special meeting held July 23, 1969, the Council adopted a resolution requesting the State Board of Education to authorize the creation of a school division for the City of Emporia.

The City School Board notified the County School Board that a separate school system for the City will be operated, that no City school children will attend the County system during the year 1969-70 and thereafter, and that the City would no longer pay a share of the cost of operating the County schools. The notification solicited the cooperation of the County School Board in making this transition which

*District Court's Findings of Fact and Conclusions of Law*

was characterized as being "for the benefit of the entire community."

The City School Board has caused to be circulated and posted a notice dated July 31, 1969, requiring all parents of school age children residing in the City to register such children during the week of August 4-8 and inviting applications from out-of-city students who desire to attend Emporia City schools on a tuition, no transportation basis.

The City School Board's proposed operation of the schools would afford those students residing in the County the opportunity to attend a City school upon payment of certain tuition fees.

Certain members of the County School Board and members of the Board of Supervisors had knowledge of the foregoing events as and when they occurred and have met with members or representatives of the City Council and of the City School Board and discussed the plans of the City to withdraw from the County school system.

The Court further finds that a failure of this Court to enjoin the defendants would result in incalculable harm to those students residing in the County and would be disruptive to the effectiveness of the Court's previous order.

The Court further finds that the members of the School Board of Emporia have not functioned as such except for the purpose of consulting with the County Board in the selection of a superintendent of schools. They never acted in any manner for purposes of offering their assistance to the County Board in reference to a school plan to be submitted to this Court.

On the basis of the foregoing, the Court makes the following

## CONCLUSIONS OF LAW

1. As a successor to the County School Board with respect to the duty to educate children of school age residing

*District Court's Findings of Fact and Conclusions of Law*

in the City of Emporia, the City School Board would be and is bound by this Court's order requiring the County School Board to disestablish racial segregation in the public school system which it controlled and operated both when this suit was commenced and when said order was entered and to do so in accordance with the plan approved by this Court.

2. As persons in participation with the County School Board with respect to the cost of the school system, and they having received notice of this Court's said order, the Council of the City of Emporia, the members thereof, the Mayor of the City, the School Board of the City of Emporia, the members thereof, the County Board of Supervisors of Greensville County and the members thereof were and are bound by this Court's said order.

3. The establishment and operation of a separate public school system by the City of Emporia and the consequent withdrawal of children residing in that City from the public school system of Greensville County would be an impermissible interference with and frustration of this Court's said order.

4. The Council of the City of Emporia may not withhold its appropriate share of financial support for the operation of public schools by the County School Board of Greensville County when such would defeat or impair, the effectuation of the constitutional rights of the plaintiffs in the manner which this Court has directed.

Dated: 8-8-69

/s/ ROBERT R. MERHIGE, JR.  
United States District Judge

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## Order of District Court

[Entered and Filed on August 8, 1969]

For the reasons assigned in the Court's Findings of Fact and the Conclusions of Law, and deeming it proper so to do, it is ADJUDGED, ORDERED and DECREED that the School Board of the City of Emporia and the members thereof, viz: E. V. Lankford, Julian P. Mitchell, P. S. Taylor and G. B. Ligon, and their successors, and the officers, agents, servants, employees and attorneys of said Board, as well as George F. Lee, as Mayor of the City of Emporia, and his successors, and the Council of the City of Emporia and the members thereof, viz: William H. Ligon, L. R. Brothers, Jr., T. Cato Tillar, Fred A. Morgan, Julian C. Watkins, S. G. Keedwell, M. L. Nicholson, Jr., and Robert F. Hutcheson, and their successors, and the officers, agents, servants, employees and attorneys of said Council, be, and they hereby are, enjoined and restrained from any action which would interfere in any manner whatsoever with the implementation of the Court's order heretofore entered in reference to the operation of public schools for the student population of Greensville County and the City of Emporia.

This order shall be effective upon the plaintiffs' giving security in the sum of \$100.00 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined; and shall remain in full force and effect for a period of 140 days unless sooner modified, enlarged or dissolved.

Let the United States Marshal serve copies of this order upon each of the named defendants.

Dated: August 8, 1969

3:45 P.M.

/s/ ROBERT R. MERHIGE, JR.  
United States District Judge

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## **Answer of Defendants to Supplemental Complaint**

Filed on August 15, 1969

1. The complaint fails to state a claim against these defendants upon which relief can be granted.

2. The Court lacks jurisdiction over the subject matter of the claims stated in the complaint.

3. Defendants admit the allegations contained in paragraph 2 of the complaint, except that they deny that the City of Emporia is located entirely within the boundaries of the County of Greenville. Though the City is surrounded by said County, it is independent of and not included in said County.

4. Defendants admit the allegations of paragraph 3 of the complaint.

5. Defendants admit the allegations of the last two sentences of paragraph 4 of the complaint. With respect to the first sentence of said paragraph, Defendants admit that during and prior to the 1968-69 school session, children of public school age residing in the City of Emporia have attended the public school system operated by the School Board of Greenville County and that, since its incorporation in 1967, the City has contributed to the general fund of said County a share of the costs of all the services provided by the County to the City, including schools. It denies the allegations of the first sentence of paragraph 4 of the complaint to the extent such allegations are inconsistent with the preceding sentence of this answer.

6. In response to the allegations of paragraphs 5 and 6 of the complaint, Defendants state that the orders and rulings of the Court speak for themselves.



*Answer of Defendants to Supplemental Complaint*

7. Defendants admit the allegations of paragraph 7 of the complaint.

8. Defendants deny the allegations of paragraph 8 of the complaint.

/s/ JOHN F. KAY, JR.

Of Counsel for Council of the City  
of Emporia and the members there-  
of, and the School Board of the City  
of Emporia and the members  
thereof

D. Dortch Warriner  
Warriner and Outten  
332 South Main Street  
Emporia, Virginia

John F. Kay, Jr.  
Mays, Valentine, Davenport & Moore  
1200 Ross Building  
Richmond, Virginia 23219

**Defendants' Exhibit E-I**

**Excerpts From Minutes Of State Board Of Education  
Meeting Held August 19-20, 1969**

**"REQUEST FOR THE CREATION OF A NEW  
SCHOOL DIVISION FOR EMPORIA CITY**

"Dr. Wilkerson reported that resolutions had been received from the school board and city council of the City of Emporia requesting the establishment of a school division consisting of the city. The Greensville County school board has passed and submitted a resolution opposing the dissolution of the present school division consisting of the county and the city . . . .

"Mr. Lankford presented the following statement: . . . .

"After a thorough discussion, the Board upon motion duly made and adopted, tabled the request of the City of Emporia in light of matters pending in the federal court."

I certify that the above is a true copy of excerpts from the minutes of the State Board of Education meeting held on August 19-20, 1969.

/s/ WOODROW W. WILKERSON  
Woodrow W. Wilkerson, Secretary  
State Board of Education

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**Minutes of Meeting of School Board of City of  
Emporia December 3, 1969 and Attachments Thereto**  
[Defendants' Exhibit E-G to District Court Proceedings  
of December 18, 1969]

The School Board, City of Emporia, met on the above date at 4 P.M. in the City Manager's (Clerk's) Office of the Municipal Building with Chairman E. V. Lankford, Jr. presiding. The following members were present:

Dr. P. C. Taylor  
Mr. Julian Mitchell  
Mr. G. B. Ligon

Also present was Mr. Robert K. McCord, Clerk.

The Chairman reported that in accordance with the School Board's actions of November 19, 1969, Dr. H. I. Willet had been instructed to prepare and submit a proposed estimated budget for Emporia City School Operation for the school year 1970-71. The Chairman further advised that Dr. Willett felt that it would be inappropriate at this time to develop the actual school curricula. Therefore, this portion was eliminated from his work.

Mr. Lankford then submitted the estimated proposed school budget for the City of Emporia for the school year 1970-71. Said budget is attached hereto as Exhibit A.

The Board carefully examined the budget as submitted together with the budget message presented, and on motion by Mr. Mitchell which was seconded by Dr. Taylor, the Board adopted the estimated proposed school budget.

Mr. Lankford advised that he would appreciate the Board Members' attendance at an informal meeting with the City Council December 4 in order to inform Council in detail on the proposed estimated school budget. He further ad-

*Minutes of School Board of Emporia of December 3, 1969*

vised that final action on the estimated budget would be dependent on City Council at their regular meeting December 5, 1969.

There being no further business, the meeting adjourned.

E. V. LANKFORD, JR.  
Chairman

ROBERT K. McCORD  
Clerk

This is to certify the above is a true copy of the minutes of the Emporia City School Board Meeting held on the above date.

ROBERT K. McCORD  
Clerk



*Minutes of School Board of Emporia of December 3, 1969*

EXHIBIT A

Minutes 12/3/69

City of Emporia

ESTIMATE OF PROPOSED SCHOOL BUDGET

1970-1971

[Emblem] Virginia Commonwealth University

Mr. E. V. Lankford

Chairman of the Emporia School Board  
Emporia, Virginia

Dear Mr. Lankford:

I am submitting herewith a proposed school budget for the City of Emporia for the session 1970-1971, which has, hopefully, been kept within the general guidelines that were set up. In our discussion at the proposed joint meeting of the school board and the City Council, we can go into more detail concerning the priority that should be assigned certain specific items.

The cost of teacher salaries in the proposed budget is in harmony with the average of the \$7500 that you had proposed. However, this item causes me some concern since it will not permit an increase in the teacher salary schedule beyond the anticipated \$300 increase in the teacher salary schedule for 1970-1971. A further increase in the teacher salary schedule merits careful consideration and may well deserve a higher priority than some items now included in the proposed budget. I will be glad to work out some proposals for consideration if you so desire.

*Minutes of School Board of Emporia of December 3, 1969*

I wish to express my appreciation for your cooperation and help in developing this proposed budget which I trust will supply the necessary information for a full discussion with the school board, the City Council, and the City Manager. I will, of course, be happy to assist with any revisions that may be proposed.

Very sincerely yours,

/s/ H. I. WILLETT  
H. I. Willett

November 28, 1969

HIW:ca

*Minutes of School Board of Emporia of December 3, 1969*

## City of Emporia

ESTIMATE OF PROPOSED SCHOOL BUDGET  
1970-1971

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**BUDGET MESSAGE****Some Basic Factors and Assumptions**

- I. The *enrollment projections* are based on enrollment figures supplied by Greenville County Administration as of September 30, 1969 for the City of Emporia. These grade by grade enrollment figures were moved up one grade and increased by approximately 10 percent on the expectation that some pupils now attending other schools would return to a city-operated school system.

The Averaged Daily Attendance figure used is based on 92 percent attendance, which was the percentage of attendance figure for Greenville County for the session 1968-69. Otherwise the enrollment figures appear reasonably stable for the next several years, except as the school system would increase its holding power as the result of an improved educational program that is more relevant to the needs of its pupils in today's world.

- II. The *estimates of revenue* are based in part upon the relationship of pupils enrolled in school from the City of Emporia to the total enrollment of pupils in the Greenville County school system. The basic State appropriation was derived from applying the State formula and using the 1968 true values as prepared by the State Tax Commission. The \$300 increase in the State teacher salary schedule for 1969-70 was worked into the



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budget plus an assumption that the General Assembly would approve another \$300 increase in the minimum basic teacher salary schedule for 1970-71. There was also an assumption that the City would provide for a kindergarten program and that some bus transportation would be essential from a practical viewpoint and that otherwise some pupils would probably have to travel a distance to school that would place them beyond the requirements to enforce a compulsory school law.

A very important quality item for children from low income families is the provision for adequate health services. Consequently, funds have been included for the development of a health program including the part-time services of a physician and two nurses. A part of this cost can be supplied through Federal funds since the service of nurses in particular would also be needed for special Federal projects. The health service could possibly be tied in closely with a city-wide health program.

Estimates of Federal funds are at best a guess at this time; however, the same pupil ratio of city pupils to county pupils from poverty target areas was assumed. The same availability of Federal appropriations was also assumed.

III. There are several important factors that will affect the cost of operating a separate and independent school system for the City of Emporia.

1. It is more costly to operate a quality education

*Minutes of School Board of Emporia of December 3, 1969*

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program for a system with less than 1500 pupils than in a considerably larger school system.

2. Since Emporia City will have more wealth per child in terms of true real estate values than Greensville County, it can expect to receive relatively less money from the State under the category of Supplemental State Share.
3. The stated reason for desiring to operate a separate and independent school system for the City of Emporia is to provide a better quality education program; consequently the cost can be expected to rise.
4. This budget is being proposed for 1970-71 which is two years later than the last year for which we have comparable figures for the per-pupil cost of operation. Consequently, costs can be expected to rise in other school divisions as the result of improved programs, inflation, and higher salaries. The following table shows the increase in per-pupil cost of operation for 1968-69 over 1967-68 in several school systems of the State:

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	1967-68 p.p.c.	1968-69 p.p.c.	Increase
Abingdon	\$436	\$528	\$ 92
Colonial Beach	517	570	53
West Point	516	526	10
Buena Vista	463	557	94
Lexington	571	607	36
Falls Church	838	982	144
Greensville Co.	452	505	53
State of Virginia			
Median	458	511	53

If the same yearly rate of increase were to occur, the per-pupil cost of operation in 1970-71 would be

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\$611 in Greensville County and \$617 for the State of Virginia. In 1965-66, the per-pupil cost of operations in Greensville County was \$299, compared with the \$505 per-pupil cost in 1968-69. This represents an average yearly increase of approximately \$68 for the three-year period in per-pupil cost of operation.

### Specific Budgetary Conditions that Relate to Quality

- I. The provision for a *kindergarten program* represents one of the most important quality items in the budget. The United States has been behind European nations in providing adequate early childhood education, and Virginia has lagged behind much of the Nation. Now that the State of Virginia supports a kindergarten program on the same basis that it supports the rest of the elemen-

*Minutes of School Board of Emporia of December 3, 1969*

tary school, this important foundation of education should expand rapidly.

The program is needed for pupils from homes where the child is highly motivated and is needed even more urgently for pupils from the disadvantaged segment of society. With the wide range in abilities, interests, and motivation now found in most schools, it becomes increasingly important to reach the child at any early age to compensate for the neutral and negative factors to be found in too many homes. American educators studying the Soviet system of education report that the most important advantage to be found in the Soviet Union is in the area of Early Childhood Education.

Recent experiments and psychological studies em-

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phasize the importance of Early Childhood Education as the foundation for all later education. For example, Professor Bloom of the Chicago University reports on his studies which indicate that approximately 50 percent of a child's capacity to learn develops by the time he is four years of age, and 80 percent by the time he is eight years of age.

- II. The per-pupil cost of education is closely related to the teacher-pupil ratio and the services that are provided. The *quality of education* is also related to these same factors. The size of class is important in meeting the needs of disadvantaged pupils and some small classes will be essential for the most gifted college bound pupils, especially in a small

*Minutes of School Board of Emporia of December 3, 1969*

high school if the pupils are to have a variety of courses to prepare them for continuing education at institutions of higher learning. The same principle also applies to vocational training of those pupils for whom high school education is terminal, at times before graduation.

Consequently, quality education in the City of Emporia will require some very small classes and a generally low pupil-teacher ratio which is fairly typical of small school systems as illustrated in the following table which gives the pupil-teacher ratio for certain school systems for the session 1968-69:

<i>School Division</i>	<i>Enrollment</i>	<i>Elementary pupil-teacher ratio</i>	<i>High School pupil-teacher ratio</i>
Abingdon	1080	22.5	17.4
Buena Vista	1530	26.5	17
Colonial Beach	500	28	14.9
Highland Co.	594	19.8	17.4
Lexington	1229	22	20
West Point	859	23.5	15.2
Greensville Co.	4261	24.7	21.6
State of Virginia	—	25.59	19.36

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This budget proposal provides for a favorable pupil-teacher ratio, but one that is comparable with other smaller school systems.

Specific provision is made for special education which is most important for a quality program.



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- III. A small school system with a capable, intelligent and innovative staff under dynamic leadership has a good opportunity to achieve excellence in part because its size presents favorable conditions for experimentation and research that will more quickly identify and implement desirable changes.

The administrative and supervisory positions included in this proposed budget are designed to create an environment and atmosphere of expectation that will stimulate the staff, pupils, and community to become involved in developing and maintaining programs of education that have meaning for both pupils and adults.

The School Board is committed to demonstrating that a small city school system can have quality education at a cost that is within the means of an intelligent, involved and informed citizenry. The approximate 50-50 racial mix in the proposed city school system presents a challenge and opportunity

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that can have significant implications not only for Emporia and Greensville County, but also for the State.

The provision for expanded adult education, after school pupil programs, health and attendance services, the use of more teacher aides, pupil transportation, a low teacher-pupil ratio, guidance services, expanded high school programs, and kindergarten represent some tangible evidence that the School Board, the City Council, and the citizens of Emporia are committed to the development of

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quality education programs to serve all the pupils of the city.

### Some Factors Related to Quality

There are certain quality features in an educational program that will not necessarily be reflected specifically in budgetary figures. The *plan of school organization* can have an important impact on the quality of the program. *Non-graded primary organizations* are no more costly and yet they offer some encouraging possibilities in dealing with children in accordance with their varying interests, abilities, and rate of development.

It is no longer realistic to expect a sixth-grade teacher to keep on the cutting edge of what is happening in all the subject areas that she is expected to teach in a self-contained classroom. Consequently, *team teaching*, where a group of teachers work together in better using the deeper knowledge of individual teachers in specific subjects, affords much promise. The group planning stimulates the teacher, and insures the pupils of more exciting presenta-

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tions and discussions that contribute to a more effective learning environment.

*Expanded work experience* with related course work in high schools along with *short training courses* permit entry into skilled and semi-skilled jobs that hold some pupils until graduation and permit other pupils who may not graduate to get jobs, rather than roam the streets aimlessly.

More emphasis on *independent study* develops the pupil's ability to think and work independently. It also presents

*Minutes of School Board of Emporia of December 3, 1969*

a plan for better meeting the pupil's needs in a small high school where classes tend to be very small in specific areas.

*Community volunteers* offer a rich resource of talent to aid the teacher in individualizing instruction and keeping the materials and techniques relevant to the best that we know.

Small school systems need the *same general services* and should perform the *same general functions* and offer the *same opportunities* that are found in larger systems. Therefore, it becomes even more important to select personnel with the training and experience to render these services. This means that one administrator or supervisor may have to perform functions in several areas. Consequently, the administrative and supervisory staff must be selected to be a part of the team that can render total services and perform all the functions that are essential in a school system.

A good in-service program for all employees will cost some money but its success relates more to morale and

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enthusiasms of staff members than to the amount of money spent. This is another reason that the school board places great value upon the quality of leadership. Federal funds are available for in-service training and many other purposes, and universities can be very helpful in supplying leadership, etc. to a small school system that necessarily will have some staff limitations.

The school board proposes to utilize such services in discharging its responsibility in providing quality education. The Board will place emphasis upon setting up priorities

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in program development that relate to the most urgent needs of pupils in this community. It will give close supervision to insure wise use of all dollars made available for education and it will seek the quality of administrative leadership that can implement its goals and purposes.

It should be pointed out that this budget proposal includes no increase in the teacher salary schedule beyond the anticipated \$300 increase in the State minimum salary schedule. The Greenville County salary schedule for 1969-70 ranges from \$6100 to \$7700, with \$100 annual increments for teachers with a Bachelor's degree. Among the 139 school systems in the State, 72 have a beginning salary of \$6100 or less, while 27 have a maximum salary of \$7700 or less for the Bachelor's degree.

There are 72 instructional jobs in the proposed budget on the teacher salary schedule. Therefore, each \$100 increase would cost \$7200. The size of the annual increments is also entirely too small to remain competitive in the State. If we are to attract and hold top level teachers, some early consideration must be given to the teacher salary schedule.

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## City of Emporia

## ESTIMATE OF PROPOSED SCHOOL BUDGET

1970-1971

## REVENUE

## STATE FUNDS

Basic Appropriation	\$287,418
Driver Education	650
Foster Home Children	720
Free Textbooks	2,500
Guidance Counselors	2,400
In-Service Training	700
Local Supervision	2,500
Pupil Transportation	7,200
Special Education	2,500
Summer School	500
Supervising Principals	1,000
Teacher Sick Leave	1,000
Educational Television	1,200
Vocational Education	12,000

## Total State Funds

\$322,288

## FEDERAL FUNDS

Adult Basic Education	4,400
Elementary & Secondary Act	120,000
N.D.E.A.	1,500
School Food Program	8,500

## Total Federal Funds

\$134,400



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## REVENUE (Continued)

## OTHER FUNDS

Donations, Tuition, Rebates, etc.	\$ 4,200
TOTAL CITY FUNDS	\$426,212

TOTAL REVENUE	\$887,100
	—11—

## DISBURSEMENTS

## ADMINISTRATION

Board Members	\$ 2,400
Superintendent	15,000
Secretaries	8,000
Audit Expense	500
Postage, Telephone, etc.	1,200
Travel	1,000
Contractual Services	1,000
Office Supplies	600
Census, Surveys, etc.	500

Total Administration	\$ 30,200
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## INSTRUCTION

Compensation of Teachers (68 x 7500)	510,000
Two Librarians	16,000
Two Guidance Counselors	17,000
One Elementary Principal	11,000
One High School Principal	12,000
One Assistant Principal	10,000
One Supervisor	10,000
Substitute Teachers	3,000

Total Instruction	\$589,000
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*Minutes of School Board of Emporia of December 3, 1969***DISBURSEMENTS (Continued)****OTHER INSTRUCTIONAL COSTS**

Clerical Services	\$ 12,000	
Instructional Aides	25,000	
Travel	1,500	
Educational Television	2,500	
Other Instructional Costs	5,000	
Library Books	10,000	
Free Textbooks	10,800	
In-Service Training	1,500	
	<hr/>	
Total Other Instructional Costs		\$ 68,300
		—12—

**ATTENDANCE AND HEALTH SERVICES**

Visiting Teachers	\$ 8,000	
Nurses	12,000	
Physician (part time)	10,000	
Medical Supplies	1,000	
	<hr/>	
Total Attendance & Health		\$ 31,000

**PUPIL TRANSPORTATION**

Transportation to School	12,000	
Miscellaneous	2,000	
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Total Pupil Transportation		\$ 14,000

**SCHOOL FOOD SERVICES**

School Lunch and Milk Fund	10,000	
	<hr/>	
Total School Food Services		\$ 10,000

*Minutes of School Board of Emporia of December 3, 1969*

## DISBURSEMENTS (Continued)

## OPERATION OF SCHOOL PLANT

Compensation of Custodial Staff	\$ 18,000
Electrical Services	4,500
Telephone Services	800
Water Services	600
Custodial Supplies	3,000
Fuel	7,500
Other Expense	600

## Total Operation of Plant

\$ 35,000

## MAINTENANCE OF SCHOOL PLANT

Compensation of Maintenance Personnel	5,000
Repair & Replacement of Equipment	5,000
Contractual Services	300
Building Materials, etc.	3,100
Other Expense	100

## Total Maintenance School Plant

\$ 13,500

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## FIXED CHARGES

Fire Insurance	\$ 2,000
Workman's Compensation Insurance	1,000
Employer's Contributions	5,500

## Total Fixed Charges

\$ 8,500

## Total Cost of Operation—Regular Day Schools

\$779,500

*Minutes of School Board of Emporia of December 3, 1969***DISBURSEMENTS (Continued)****SUMMER SCHOOL**

Compensation Instructional  
Personnel

\$ 3,600

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Total Summer School

\$ 3,600

**ADULT EDUCATION**

Basic Adult Education

5,000

General Adult Education

1,000

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Total Adult Education

\$ 6,000

**CAPITAL OUTLAY**

Furniture and Equipment

6,000

School Buses

12,000

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Total Capital Outlay

\$ 18,000

**OTHER EDUCATIONAL PROGRAMS**

Clerical Services

1,000

Aides

15,000

Custodial Services

2,000

Instructional Personnel

25,000

Equipment & Supplies

4,000

Books and Supplies

3,000

Other Costs

10,000

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Total Other Educational  
Programs

\$ 60,000

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TOTAL DISBURSEMENTS

\$887,100

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*Minutes of School Board of Emporia of December 3, 1969*

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## REVENUE

## BUDGET SUMMARY

## STATE FUNDS

Basic Appropriations	\$287,418
Other State Funds	34,870

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Total State Funds	\$322,288
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## FEDERAL FUNDS

134,400

## OTHER FUNDS (LOCAL)

4,200

## CITY FUNDS

426,212

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Total Revenue	\$887,100
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## DISBURSEMENTS

## Percentage

Administration	30,200	3.8
Instruction	589,000	74.2
Other Instructional Costs	68,300	8.8
Attendance & Health Services	31,000	
Pupil Transportation	14,000	5.8
School Food Services	10,000	
Operation of Plant	35,000	4.5
Maintenance School Plant	13,500	1.8
Fixed Charges	8,500	1.1

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Total Cost of Operation Regular Day Schools	779,500	100
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Other Educational Programs	60,000	
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Total Disbursements	\$887,100	
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*Minutes of School Board of Emporia of December 3, 1969*

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## ESTIMATED PUPIL ENROLLMENT

Grade	No. of Pupils	Teachers
Kindergarten	110	5
1	120	5
2	120	5
3	90	4
4	120	5
5	96	4
6	100	4
7	115	5
Total Elementary	871	37
8	110)	
9	100)	
10	90)	28
11	100)	
12	70)	
Spec. Ed.	26	3
Total High School	496	31
Totals	1367	68

A.D.A. 801—Based on attendance; average class size 23.5; State Teacher Units—27

Based on Pupil-Teacher Ratio—17  
Including librarian & counselor—15.67

A.D.A. 456—Based on attendance; State Teacher Units—20  
A.D.A. 1257—Teacher Units—47

## Estimates applied to State Distribution Formula

Salaries	ADA	ADA x 115	Minimum Program	60—1968 Values	State Share	Supplemental State Share
312,879	1257	144,555	457,434	170,016	187,727	99,691

*Minutes of School Board of Emporia of December 3, 1969*

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## City of Emporia

## DATA FROM VIRGINIA TAX COMMISSION

*1968—Estimated True Value*

Real Estate	\$25,565,000
Public Service Corporation	2,771,000
Total	\$28,336,000

*1968—Assessed Value*

Real Estate	\$ 3,783,590
Tangible Personal Property	1,682,565
Machine & Tool	431,171
Merchants Capital	571,361
Public Service Corporation	944,203
Total	\$ 7,412,890

*Some Comparative Data*

Greensville County 1968 True Values—33.6 in Emporia City	
Greensville County, Sept. 30, 1969 Enrollment—29.9 in Emporia City	
Greensville County 1967—1968 Per Pupil Cost of Operation—\$452	
Greensville County 1968—1969	505
Abingdon	528
Colonial Beach	570
Poquoson	484
West Point	526
Highland County	592
Lexington	607
Fairfax City	671
Falls Church	982
Buena Vista	557

Median per-pupil cost 1968-1969—Towns 503, Counties 503

Cities 575—State 511. Estimate Emporia 1970-1971, 620.

**Defendants' Exhibit E-F****Minutes of Meeting of School Board of City of Emporia,  
December 10, 1969**

The School Board of the City of Emporia met on the above date at 5 P.M. in the Municipal Building with Chairman E. V. Lankford, Jr. presiding. The following members were present:

Dr. P. C. Taylor  
Mr. Julian P. Mitchell  
Mr. G. B. Ligon

Also present were City Attorney D. Dortch Warriner and Robert K. McCord, Clerk.

Mr. Lankford reported to the School Board that the proposed estimated school budget for City School Operation for the school year 1970-71 had been unanimously adopted by the City Council at their regular meeting December 5, 1969.

Mr. Lankford introduced the following Resolution, which after considerable discussion by the Board, was unanimously adopted:

If permitted by the United States District Court to operate its own school system, the School Board of the City of Emporia will do so according to the following plan:

1. Assignment of pupils and faculty shall be made on a completely racially integrated basis resulting in a racially unitary system. All pupils of the same grade in the system shall be assigned to the same school, with the possible exception of those pupils assigned to a special education program which program will

*Defendants' Exhibit E-F*

be conducted on a racially integrated basis. It is contemplated that all grades, kindergarten through the sixth grade, shall be located and conducted in one building (the former Emporia Elementary School to be renamed R. R. Moton Elementary School) and all grades, seventh through twelfth, shall be located and conducted in one building (the former Greenville County High School to be renamed Emporia High School).

2. The schools will sponsor and support a full range of extra-curricular activities and all activities conducted by or in the public school system will be on a racially integrated basis.

3. Any bus transportation that is provided will be on a racially integrated basis.

4. No students will be accepted from other school divisions or districts until approval is first obtained from the United States District Court.

/s/ E. V. LANKFORD, JR.  
Chairman

/s/ ROBERT K. McCORD  
Clerk

**Proceedings of December 18, 1969****[11]**

HEARING BEFORE  
THE HONORABLE ROBERT R. MERHIGE, JR.,  
UNITED STATES DISTRICT JUDGE,  
FOR THE EASTERN DISTRICT OF VIRGINIA,  
AT RICHMOND, VIRGINIA,  
18 DECEMBER 1969.

**[12]** . . .

EDWARD G. LANKFORD, having been called as a witness was duly sworn by the Clerk and testified on his oath, as follows:

*Direct Examination by Mr. Warriner:*

Q. What is your name, please? A. My name is Edward G. Lankford, Junior.

Q. What is your age? A. 45.

Q. And your occupation? A. I am in the general insurance business.

Q. And your place of residence? A. 505 Laurel Street, Emporia, Virginia.

Q. With respect to the School Board of the City of Emporia, what office, if any, do you hold? A. I am a member of the School Board and I was elected as its Chairman.

Q. When was this City School Board constituted? A. Shortly following the transition of Emporia to a City in July, I received a call from the Mayor and in late August, while I was on vacation.

**[13]** Q. What year? A. August of 1967.

Q. When did the City undergo a transition from a town to a City? A. July 31, 1967, I believe.



*Edward G. Lankford—for Defendants—Direct*

Q. After the School Board was—for the City of Emporia, was constituted in August of 1967, what activity, if any, did the School Board enter into? A. We found ourselves in a rather difficult situation. Here we were a four-man school board, with no previous school administrative experience. So, we had to seek advice from whatever direction we could find it. We realized, of course, that these children from the City had already entered into the County School system with no formal agreement of any kind. We met and discussed several things. I met, personally, with the Superintendent of Schools. I met with the Chairman of the School Board informally and he and I discussed it. It seemed to me, we had three alternatives; we could operate an independent system, completely separate from the County of Greensville; we could try to establish a jointly operated system, whereby the school operation would be vested in a single school board; with equal, not equal, but proportionate representation [14] on the part of the County and the City systems and the third alternative was to contract with the County to educate the City pupils.

Q. Did you seek to effectuate any of these alternatives? A. I believe, personally, ultimately, I felt an independent operation would be the best way, but practically speaking, at that time, knowing the attitude of the County government, we were more inclined; after my discussions with Mr. Slate, who is the Chairman of the School Board, and Mr. Wright, who is or was, Superintendent at that time, were more,—I was personally, more inclined to go along with a joint operation.

Q. Did you have the support of your School Board in this? A. Yes, sir.

*Edward G. Lankford—for Defendants—Direct*

Q. Did you have the support of the County School Board in this? A. I can't say officials. Those officials—with those I talked to, I believe that they were agreeable to a jointly operated system.

Q. Were you able to obtain a jointly operated system? A. No, sir.

Q. Why not? A. A jointly operated system, according to the State law, has to be approved by both school boards and [15] the City-Council and the Board of Supervisors. On this 17th of November, I believe, 1967, the Board of Supervisors adopted a resolution, one paragraph of which firmly stated that they would not agree to any joint operation of schools.

Q. Mr. Lankford, I show you a photostatic copy of a piece of paper and I ask you if you recognize it? A. Yes, sir.

Q. What is the date on it? A. The 27th day of November 1967.

Q. What does it purport to be? A. It is a resolution on the operation of schools from that special meeting of the Board of Supervisors of the Greenville County?

Q. Did you receive a copy of this resolution in the course of your duties as Chairman of the City School Board? A. Yes, sir.

Q. Would you read paragraph number one of that resolution into the record? A. "The County of Greenville will not grant approval of any joint operation of the County and City schools systems."

Q. If Your Honor Please, I present this in evidence. I don't know what number, whether you continue the numbers from the last time or not.

The Court: Any objections?

*Edward G. Lankford—for Defendants—Direct*

**[16]** Mr. Tucker: No objections.

The Court: It is admitted into evidence.

(Clerk marked Defendant's Exhibit E-A)

Q. Now, following this notice, did you seek legal advice in an attempt to persist in this effort to obtain a joint school system, or an independent school system? A. Yes, sir, of course, the City had at its—at that time, as it attorney, Mr. C. D. Hendrick and I went to Mr. Hendrick and we discussed these problems. Mr. Hendrick had, I believe, at that time, already indicated to City Council that he preferred not to represent the City in any litigation between the City and County over this transition. Which, I assumed, meant that he—well, he told me—

Mr. Marsh: Your Honor, this is hearsay. It is alright, but now he has assumed what Mr. Hendrick had in mind. I think he is going too far.

The Court: You had an objection?

Mr. Marsh: Yes, sir, objection to the question and the answer.

The Court: As being hearsay, or, going too far?

Mr. Marsh: Your Honor, on hearsay, all on the assumption of what Mr. Hendrick had had in mind.

The Court: Objection sustained.

**[17]** Q. Were you able to obtain representation on the part of the School Board by Mr. Hendrick? A. No, sir.

Q. Did you obtain representation of the School Board by any other counsel? A. Yes.

Q. Who? A. The City retained Mr. Harold Townsend as counsel.

*Edward G. Lankford—for Defendants—Direct*

Q. Did you, in the course of representation by Mr. Townsend, have any conferences or other conferences or correspondence, with him? A. Yes, sir.

Q. What instructions did you give Mr. Townsend, with respect to the type of school operation that you wanted him to obtain for you? A. The instructions, as I recall, were more or less guided by this resolution that the County had passed. I felt that the operation of the joint system had been stymied at that time. The only other alternative that we could go to would be a contractual arrangement and we felt that a—if we could negotiate a contract with the County for the continued operation, or continued education of the City pupils, that we could possibly buy a little time. We attempted, or I asked him in the agreement, to come up with maybe a one-year contract, with a [18] six month's termination clause. So that at the end of that time, we could either renegotiate a contract, the completion of the political make-up of the Board of Supervisors may have changed by that time. We could, we would have a little bit more free hand.

Q. Did your Council submit various and sundry proposals in an attempt to effectuate either a joint School Board or a contract that would replace it by you some time so that you could set up your own system? A. Yes, sir.

Q. I show you a sheet of—consisting of 1, 2, 3, 4, 5—6 different groups of papers stapled together and ask you to—if you recognize them? A. Yes, sir.

Q. What are they? A. These are at least six different contracts that were drawn up, either by our attorney, Mr. Townsend, or by the County's attorney, Mr. Fitzgerald and I say at least six. There may have been more, but this is all I have in my file.

*Edward G. Lankford—for Defendants—Direct*

Q. I ask that these be accepted into evidence as one exhibit.

The Court: All right.

Mr. Tucker: We object to the introduction of the papers in evidence. They are totally [19] immaterial to what—

The Court: Let me ask you—the admissibility of evidence depends upon the purpose. What is the purpose?

Mr. Warriner: The purpose is to show, if Your Honor please, these people did not suddenly, in June 1969, become interested and involved in their school system.

The Court: It is not really necessary if that is your purpose, to plug the record with papers. The witness testified that—that is what he is testifying to now.

Mr. Warriner: If that is acceptable, Your Honor, I withdraw those.

The Court: Objection sustained.

Q. Now, in the Spring of let's say, I'll go to March of 1968, had you, at that time, been able to effect a joint school system, a separate school system, or a contract system?  
A. No, sir.

Q. Did you, in March of 1968, receive any notice from the County, that, with respect to the operation of the schools? A. Yes, sir, we received a copy of a resolution they passed.

[20] Q. I show you a paper writing and ask you if you recognize it? A. Yes, sir.

2



*Edward G. Lankford—for Defendants—Direct*

Q. What is it? A. This is an extract of the Minutes of the Board of Supervisors meeting, held in the County, on Tuesday, March 19, 1968.

Q. Would you read into the record the substance of that resolution, word-for-word? A. "Resolved, that Special Counsel for the County, Mr. Robert C. Fitzgerald, is hereby authorized to submit to the City of Emporia, or its Counsel, an agreement providing for the basis of services to be provided by the County to the Citizens of the City, and the payment therefor, together with other matters regarding transition in the form and word as approved by this Board this date. Be it further resolved that upon agreement on the part of the County and the City of Emporia and the School Board City and County, the Chairman and Clerk of this Board are hereby authorized to execute such agreement on behalf of the County of Greensville. Be it further resolved that if this agreement is not agreed to and executed by all parties by April 30, all services furnished by the County to the City not required by law, shall terminate."

[21] Q. What was the date of that? A. This is an excerpt of the Minutes of the School Board Meeting of March 19, 1968.

Q. I ask that that be accepted in evidence, if Your Honor please.

The Court: So ordered.

(Clerk marked Defendant's Exhibit E-B)

Q. Now, Mr. Lankford, after receiving that ultimatum in March of 1968, when did you enter into a contract with the City? A. The final contract was signed on the tenth day of April 1968.

*Edward G. Lankford—for Defendants—Direct*

Q. I show you a paper writing and ask you if you recognize it? A. Yes, sir.

Q. Is that the contract of April tenth, 1968? A. Yes, sir.

Q. I ask that this be accepted in to evidence.

The Court: So ordered.

(Clerk marked Defendant's Exhibit E-C)

Mr. Tucker: That's already in evidence.

Mr. Warriner: I'm sorry. Is that your recollection?

Mr. Tucker: Yes, sir.

Mr. Warriner: I hope that Your Honor will permit us to take it and if not, withdraw it.

[22] Mr. Tucker: Plaintiff's Exhibit #7 at the last hearing.

The Court: All right.

Q. Now, Mr. Lankford, why did you enter into that contract? A. I think it's previously been stated it was sort of a shot-gun arrangement; we had our backs against the wall the children were in school, the County had stated that if something wasn't agreed to, they would be turned out on the 30th day of April. We attempted in every way we could, to get a contract that was more palpable, or more palatable than this one, that we finally ended up with, certainly, we didn't want any four-year "purity" involved.

Q. Were you satisfied with the contract? A. No, sir.

Q. In June of 1969, did you obtain new, or different counsel, legal counsel, for your school board? A. Yes, sir.

Q. Did your new legal counsel, who was that? A. It was Mr. Dortch Warriner.

Q. Me? A. Yes, sir.

*Edward G. Lankford—for Defendants—Direct*

Q. Did your legal counsel, at that time, advise you as to whether or not this contract was enforceable? A. He advised me at that time, that the contract in [23] his opinion, was illegal.

Q. On what ground? A. On constitutional ground, in that we had signed and what was in effect, a blank check for the City of Emporia. We had obligated the City to an undetermined amount of debt, which is illegal.

Q. Now, what was your plan at the time you entered into the contract? What was your long-range plan for education of the City children? A. Well, as I previously said, I personally felt an independent system would be the most satisfactory thing. The joint operation could have been acceptable—could have been agreeable to us, if we could have had the joint operation, where we have, would have had some say so as to the money and the type of education our pupils were going to get.

Q. Now, in the period prior to June of 1969, was the school system, the joint schools,—wait a minute—a joint school with the school system of Greenville continued to operate in compliance with the Constitution of the United States? A. Yes, sir.

Q. So, as far as you know, was the system under which they operated, one that had been approved by The Honorable Robert R. Merhige, Jr., Judge of this Court? [24] A. Yes, sir.

Q. I understand you are not a lawyer? A. No, sir.

Q. Did you, at any time, attempt to interfere with the plan that had been approved by Judge Merhige? A. No, sir.

Q. Did you, at any time, attempt to have them change the plan that had been approved? A. "Them", you mean the County School Board?

*Edward G. Lankford—for Defendants—Direct*

Q. Yes, sir. A. No, sir.

Q. Did you feel called upon to ask them to change the plan to some other type of plan? A. No, sir.

Q. Did your school board ask that you do that? A. No, sir.

Q. Were you satisfied with the education that the children from the City of Emporia, were receiving? A. We felt that with the plan that had been approved by this Federal Court, that the County was able to operate a reasonably effective school system, and was able to put in the necessary funds to give a reasonably effective education to the children.

The Court: I take it you felt that the children were getting a good education?

A. At that time, with the money that the County was [25] spending, yes, sir.

Q. Were you planning on renegotiating your contract, your four-year contract, that you had? A. No, sir, I don't think I was planning to. No, sir.

Q. Did you think that your school board intended to renew it? A. I believe they felt the same way that I did.

Q. What do you intend to do, or what did you intend to do at the termination of that contract? A. To proceed in your own school system.

Q. Have you given notice to the City to the County, that, whether or not the pending suit, to have the contract declared void, is successful, that you intend to terminate that contract at the earliest possible day? A. Our counsel has given—

Q. At your request? A. At our request, yes.

Q. I show you a paper and ask you if you recognize it? A. Yes, sir.

*Edward G. Lankford—for Defendants—Direct*

Q. What does it purport to be? A. This is a letter from the County, the Council, the City School Board and City Council, addressed to the Board of Supervisors, Greenville County and County School Board of Greenville County, stating [26] its position in the contractual arrangement and that they will be terminated effective July 31, 1971.

Q. I ask that this notice be accepted into evidence.

*(Defendant's Exhibit E-C)*

Q. Now, Mr. Lankford, in June of 1969, the Court entered an Order changing its prior plan and instituting a new plan for mixing in the schools. It was after this Order was entered that your School Board took action to set up a separate, independent school system for the City of Emporia. Why did this Order precipitate action on your part?

A. We felt confident that with the complete change in school systems to a unitary system, we felt that the County, particularly the County Board of Supervisors, was not able to successfully operate such a unitary system. We felt that with the cost of transportation increasing, with certain things that should be done in a unitary system to improve educational opportunities and quality, monies would have to be expended. We felt that the County Board who controls the purse strings of the County School Board, were not willing to expend these monies to be—to establish excellence in the school system. We felt that they had no desire to effect the assimilation of the races in the unitary system.

[27] Q. Did your School Board have such a desire? A. Yes, sir.



*Edward G. Lankford—for Defendants—Direct*

Q. Did your School Board, was your School Board, able to do this work? A. We believe so, yes, sir.

Q. Why didn't you wait until the expiration of the contract period? A. Having been advised that the contract was illegal, we felt the time to move was immediately.

Q. What steps did you take? A. First of all, we made application to the State Board of Education, to establish the City of Emporia as a separate School Division. This will enable us to have our own superintendent, responsible just to the City, rather than sharing a superintendent with the County of Greenville as it is now set up. Second of all, we will participate in asking the Council for the City to file suits in the Circuit Court to establish the equity in our school buildings that we feel are properly ours. We ask that they file suit in the Circuit Court to void the contract due to its being illegal. We then felt that we wanted to, if we were going to go independent, we wanted to put excellence in our system. We wanted to make a system which would attract people to our community, [28] rather than draw them out. We wanted a system whereby our industrial relations people in the City could say here, we've got one of the finest systems in the south side of Virginia, when they are talking to industry. We wanted a system that would hold the people in public school education, rather than drive them into a private school, or, making them drop out before their education terminated.

We sought the best advice that we could get. So we communicated with Dr. Wilkerson.

Q. Well, let me ask you this, would the type of school program that you envisioned and that you have outlined in brief, to the Court, would that be in the best interests of the school children for whom you are responsible? A. Yes, sir.

*Edward G. Lankford—for Defendants—Direct*

Q. Let me ask you, Mr. Lankford, was race a factor in your decision to create an independent school system? A. Yes, sir, it was a factor, but not in the sense that we wanted to perpetuate a segregated school system. Race, of course, effected the operation of the schools by the County and I again say, I do not think, or we felt that the County was not capable of putting the monies in and the effort and the leadership into a system that would effectively make a unitary system work and result with quality education, as [29] well.

Q. Since August of 1969, have you attended any of the meetings of the County School Board? A. Yes, sir, I have attended three, I believe. I was formally invited by the Chairman of that School Board on the first day of October.

Q. I show you a paper writing and ask you if you recognize that? A. Yes, sir.

Q. What does it purport to be? A. It is a letter addressed to me, signed by S. A. Owen, Superintendent.

Q. The date of it? A. October 1, 1969.

Q. What does this letter say? A. In substance, well, you want me to read it?

Q. Go ahead. A. Mr. Lankford: The Greenville County School Board would like to—

Mr. Tucker: Let me see that.

A. "Dear Mr. Lankford, The Greenville County School Board would like to invite you to attend monthly school board meetings anytime you see fit. Regular monthly meetings are held the second Tuesday of each month at 1:30 o'clock in the school board [30] "office."

Q. What's the date of that? A. October 1, 1969.

*Edward G. Lankford—for Defendants—Direct*

Q. I ask that this be accepted into evidence. Pursuant to that invitation, if you can call it such, did you attend school board meetings? A. Yes.

Q. At these school board meetings, was your opinion requested on any matters which arose? A. No, sir.

Q. Were you permitted to vote on any matter?

Mr. Tucker: If Your Honor please, all this is after the fact. That letter is September?

Q. October First.

The Court: I don't see the relevancy of this.

Q. I see where it is relevant in this case. The only relevancy, Your Honor, is that at the last hearing Your Honor cross examined witnesses closed on the question of their attempt to work with the County School Board. I was attempting to show to Your Honor that these attempts before and after the fact are fruitless. This is the purpose of it.

Mr. Marsh: Your Honor, the minutes of the meeting would be evidence of what happened at [31] the meeting. I don't think the witness' testimony as to his attempt to questions and refusals is—

The Court: Yes, I think that is true: I don't know. Are you through, Mr. Marsh?

Mr. Marsh: Yes.

The Court: I don't know the materiality. I think I see the point but you are not getting at, but you have been there for some time, Mr. Warriner, that the City and County is just, the City and the County just haven't been able to work things out, I don't mind, actually, but I am distressed, disturbed, that

*Edward G. Lankford—for Defendants—Direct*

the County has no position in this matter. I am very much disturbed about that and I view it in fairness, I must say I do it rather skeptically that they have no position. It is not your fault, I know, so in view of that, in fairness, I want you to go ahead and put in within reason, what you want.

Q. I am sure Your Honor means both of the things, Your Honor says you are skeptical of it and you know it is not our fault. That is only part, the only part that concerns me. I don't want Your Honor to believe that I consciously, or that somebody—

The Court: I want you to put in the record, within reason, the City's attitude. I think [32]. I understand what the evidence shows thereafter, to be.

Q. We would like to show evidence that there is no collusion between these two political bodies; if there is any question in the Court's mind.

The Court: Why don't you just ask him. I know what he will say, of course, knowing ahead, but ask him and I am sure he will say it sincerely and truthfully.

Q. As long as Your Honor understands that he is saying that I—

The Court: You don't want to clutter it up, let me say this, now, before we go too far. I think the matter now is in a different posture and less difficult in the calmness of December than it was. Hopefully, all of these matters can be considered in a calm

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atmosphere. There are a lot of matters I am disturbed about. I am disturbed about the thought that the brief you and Mr. Kay filed, was an excellent brief. I am not disturbed by it, it is very helpful to the Court and I will ultimately get one from the other side. It is an excellent one. One of the best briefs that I have ever seen, but there are a lot of things I am not sure of. It is the duty of this Court to order [33] children, and I don't mean, yes, I am skeptical that the big push comes. Not integrated schools, unitary schools, didn't really happen before. Mr. Warriner, you go ahead and put in what you want.

Q. I think in candor that work is almost wholly the work of Mr. Kay. I hate to have to say that.

The Court: It really is excellent.

Q. Mr. Lankford, directly has there been any collusion between the County and the City in the matter of the separate school system? A. No, sir, in fact, there's been very little communication between the two bodies.

Q. Have they assisted you in any way to set up an independent school system? A. No.

Q. Have they cooperated with you to that end? A. No, sir.

Q. Has their attitude been cooperative or antagonistic? A. Certainly has not been cooperative.

Q. Describe their attitude. A. It's been sort of taking no position in the matter.

Q. In the matters which are being presently litigated in the State courts, so far as that your School Board is involved in, have they been acquiescent in the effort on the



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part of the City? A. No, sir, they've been fighting us every inch of the [34] way.

Q. Do you have, with respect to the children that you are sponsoring, their instructions; do you have any—any of your Board have any control of the hiring of the teachers? A. No, sir.

Q. Do you have any control over the setting of the salaries? A. No, sir.

Q. Do you have any control over the curriculum? A. No, sir.

Q. Do you have—

The Court: Mr. Lankford, excuse me. You may have already testified what action, if any, besides talking to lawyers, did you—what legal action did you all attempt so that you would get, so you could say something about the teachers and curriculum? Were you all just a Board discussing this or were you—

A. Our efforts were directed after the, or, originally directed toward establishing some type of a joint operation, where we could have co-operation.

The Court: It came to pass because of the lack of co-operation on the part of the County?

A. Well, one of these contracts that I think we had, indicates that we would have.

[35] The Court: But you never went to Court about the contract until now, isn't that the truth?

A. That's correct, sir.

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The Court: All right.

Q. When did you obtain a lawyer who advised you that the contract was illegal or violative of the Constitution?

A. In June, I would say, June of this year, June of 1969.

Q. Did your prior counsel give you any such advice?

A. No, sir.

Q. Did your prior counsel cease his employment as a result of the Order from Judge Merhige in this suit? A. No, sir.

Q. What reason did he cease his employment? A. He was hired—

Mr. Tucker: Excuse me, I hate to interrupt; I don't think it is material.

Q. I think it is material because His Honor has indicated, if Your Honor please, that it is a matter with which you are concerned.

The Court: He was discharged, as prior counsel is that what you want to get in the record?

A. Prior counsel is deceased—died.

Q. It had nothing to do with having to do with the schools? A. No, sir.

Q. He just died of his own accord? [36] A. Yes.

Q. If Your Honor please, this is fact.

The Court: I am not laughing. I know it is a serious matter but dying of his own accord—

Q. I am afraid that I should not have stated it that way. A. Passed away because of natural causes.

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Q. That's correct. Now, would you have—you have outlined briefly, I think, the steps that you have taken in order to obtain a right to have an independent school system if the Court would permit you to do so, in taking of these steps, Mr. Lankford, have you sought the advice of counsel as to whether the steps that you have taken would be violative of His Honor's injunction? A. Absolutely.

Q. Have you been advised by counsel that you were violating the injunction, or the, that you were not violating it? A. That we were not in violation of the injunction.

Q. Now, what is the status of your application to the State Board of Education for a separate school division?

A. We submitted a resolution to them on the 20th of August. Their action at that meeting in Williamsburg was that they would table the resolution.

[37] Q. For what reason? A. Until this pending litigation was cleared up in Federal Court.

Q. Now, even if your application for a separate school division is denied by the State Board of Education, are you legally in a posture under which you can operate a straight school system? A. Yes, sir.

Q. Now, explain to His Honor how that comes to be. How that is a fact.

The Court: I think I can. That is a matter of law, isn't it.

Q. It is a matter also, if Your Honor please, it is a matter of operation of schools in Virginia but, if Your Honor please, if Your Honor is aware of that law, then, there is no problem.

The Court: Well, let's see what your position is.

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Mr. Tucker: My position is that it is a matter of State law. The witness is not an expert as to what is legal. It is, I think, a matter of law.

Q. They can discuss it in briefs, if they want. I show you a paper, writing, December 7, 1967, and I ask you if you recognize it. A. Yes, sir.

[38] Q. Who is it to and who is it from? A. It is addressed to A. G. Slate, Greenville County School Board and me, Edward V. Lankford, Jr., incorrectly, as the Chairman of the Emporia City School Board.

Q. And, who is it from? A. From Woodrow W. Wilkerson, Superintendent of Public Instruction of the Commonwealth of Virginia.

Q. What is that date? A. December 7, 1967.

Q. Is there any portion of that letter having to do with the operations of the separate school division; or separate school district, excuse me? A. I am not sure of the question.

Q. Is this letter, does it pertain to the operation of a separate school district? A. For the City of Emporia?

Q. Yes. A. There is reference in here, yes.

Mr. Tucker: Excuse me one second.

Q. Would you read that letter? A. Dear Messrs Slate and Lankford: This is to advise that the State Board of Education at its meeting last Friday, established a new school division consisting of Greenville County and the City of [39] Emporia, effective December 1, 1967. This means that each political sub-division has its own school board and one superintendent will serve both boards. In this connection, I would call your attention to Section 22-34

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of the Virginia School Code which provides that the school boards of a school division shall meet jointly for the purpose of electing a superintendent. I take this opportunity to express to you the desire of the department to render every assistance possible in connection with your efforts to further strengthen your educational programs for the boys and girls of the County and City."

Q: Now, Mr. Lankford, whether or not you operate as a separate school district or a separate school division. Has your school board adopted a school assignment plan?

A. Yes, sir.

(Defendant's Exhibit E-E, marked for identification)

The Court: Let me just make this suggestion, in the interest of keeping this record down, Mr. Wariner, it occurs to me that there are two issues in this case at the moment. One, is the right of the City of Emporia to just operate [40] their own school system. There doesn't seem to be too much argument about that. If we didn't have other factors involved. Then, the second one is, what effect does it have on the plan that's been approved, that is Greenville County plan, because Emporia is now a party to this suit. I believe it appears to. It sure feels like they are.

Q. Yes, Your Honor.

The Court: They are a party to this suit and I am satisfied that assuming this injunction is lifted and they go forward with the plans, they are going to present a plan to the Court to be considered and



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approved or disapproved. I don't see the materiality of what their plan is, at this time, I am willing to take representations of counsel, if counsel are at least satisfied that it conforms to the requirements of the Constitution.

Q. I think it would be helpful to Your Honor if we put it right into evidence. I have it here, it is just very brief.

The Court: The main thing that I am concerned with in this case, is the effect it has on the plan that is already in effect. So, you've got to balance the legal rights of Emporia and then we've got the equitable problem. This is a matter [41] of equity. There isn't any doubt from the evidence I have heard before, so I do think this plan is going to be amended somewhat before my opinion would have violated, absolutely, the Greenville plan.

Q. We have a witness who will testify immediately after Mr. Lankford, on the question of what the present system is; its advantages and disadvantages and how the City system would be an improvement over that. I think that, I think that Your Honor will be able to compare then the questions that are in your mind about what effect does it have.

The Court: Well, the purpose, what is the purpose of introducing this evidence, to show that these people want quality education?

Q. The prime purpose if Your Honor please, it is to show they will not have to, they do not intend to deprive any person of his rights under the Constitution of The United States and we believe that once we show that, the

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inquiry ends, but once we show that no one is being deprived of his Federal protective rights the inquiry of this Court ends. We understand that is not the Court's position, therefore,—

The Court: I don't know, I have no position on it, as I said before; this is a much—a more different situation than it was in August.

[42] Q. August 8.

The Court: Well, at least these are very difficult times. I don't know about you all, but it certainly was for the Court, on a daily basis, very, very difficult times and all the internal things we were told were to come to pass, didn't come to pass.

Q. We didn't put any evidence in the—

The Court: Well, others did.

Q. We want to be judged by the evidence we put in.

The Court: The evidence I had, I was satisfied at that time, I would have scuttled the Greenville plan and would have made it impossible but this was then and now it is a different time. I am not sure this matter is material at this stage.

Q. May we put it in the record for whatever it might be worth?

The Court: All right.

Q. Mr. Lankford, will you read to the Court the plan that has been adopted by your City School Board for the oper-

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ation of the schools? A. This is a certified copy of the minutes. Do you want me to read the entire minutes, or the plan?

The Court: Hand it up to me and I will [43] just read it.

Q. I would like for it to be in evidence, please. (Handed same to the Court).

(Defendant's Exhibit E-F).

The Court: All right sir, I have looked at it.

Q. Now, Mr. Lankford, in order to effectuate the plan that His Honor has just read, what practical steps have you taken insofar as setting up the budget and a school assignment plan and that type of budget and that type of thing?

Mr. Tucker: If Your Honor please, we have been quite patient with all this prospective business, but I think all this is immaterial to the issue that is before this Court to decide as to whether we are permitted to go—

The Court: That is what I say. I am satisfied to let the other side complain. I am satisfied that if this injunction is lifted that there is reasonable prospects that the children of Emporia will be, well, I am satisfied because I think they want to do, to operate within the law. The school system. But, they will, in any event, because this Court has not got to approve any plan. That is not the issue. The issue is, what effect does it have on Greenville and is that

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legally [44] material, that is, I think that is the issue. Do you know what is material about this letter. Let the record show they contemplate a system whereby there will be 50% of the student population, will be the Negro race and 50% will be the Caucasian race. Isn't that what it is going to be?

Q. That is roughly the population of the City. It will be nothing artificial about it, it will be what naturally lies there.

The Court: Well, I don't want to clutter this record with a plan that we may have to go in to in some detail, if this injunction is lifted, as well as having to go in some detail and I don't think it is material except to say that I am satisfied that the City of Emporia will operate, they will operate it as required under the Constitution.

Q. And, it is the desire of the officials, they want to do that, but if they did want to, or if they didn't want to do it, any way. It makes a difference whether they wanted to or not. At least it seems that way to me.

The Court: Well, we'll get around to that plan, but I think they do.

Q. Would you give me two minutes to cover this and confer [45] with my co-counsel?

The Court: If you think I am wrong, legally, tell me, but I don't see any sense in cluttering up the record at this time. Mr. Marsh, let me say this because if the Court determines that it is material to the legal problem that we have here, I will let

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you put on anything you want, but I have another hearing for that purpose.

Mr. Marsh: Well, I think that would, frankly, if Your Honor please, what we are attempting to do, was to answer the questions that the Court raised at the last hearing. The Court pointed out several times that the atmosphere is somewhat different now and I would say this, as long as the Court—

The Court: If you want to examine, examine as to what effect the, the legal effect it will have on Greenville, if it is approved; maybe not, but I think that is it.

Mr. Marsh: I would propose to do it at any time since it appears Your Honor is satisfied as to the good faith and motives of the City and of their desire to effectuate a school system in Greenville, or excuse me, in compliance with the Constitution. I would like to submit the budget.

The Court: Well, this is not to say that [46] I am satisfied that the Courts—I don't want to intimate I am satisfied that all of this desire was precipitated just by a desire. I think the school plan, the Court's plan Greenville has something to do with this desire. I do, but that may be completely immaterial, as a matter of fact, Mr. Lankford has said that it was one factor and he's given—

Mr. Marsh: Well, of course—

The Court: —and it is understandable and I don't think it is bad, but I don't want you to misinterpret my remarks. I think the school's plan,—I'm not satisfied yet, that this would have come to pass, had not Green vs. New Kent been decided and had not other actions been decided, but that might not be



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legally bad. People have the right and they want the best education for their children.

Mr. Marsh: Well, with the understanding that it will be developed at a later time that these matters, inquiries into not only what the motives were, but how it was actuated, if that becomes pertinent, with the understanding we can put on more evidence, I will put on the budget.

The Court: I think the people have legal rights of motivation but it may not be a factor the [47]—it may not be a factor for the Court to even consider.

Q. Mr. Lankford, I show you a paper writing that purports to be a budget for the City of Emporia schools and I ask you if you recognize it. A. Yes, sir.

Q. Was this budget adopted after consultation? A. Yes, sir.

Q. With whom did you consult? A. We consulted with the Dr. H. I. Willett.

Q. Was this budget adopted by the School Board of Greensville County? A. Yes, sir.

Q. Was the budget adopted by the City Council of the City of Emporia? A. No, they stated that they could adopt such a budget.

Q. I ask that this budget be accepted into evidence.

Mr. Tucker: I just want to remark that we don't see the materiality to it.

The Court: I understand but I am not going to examine it at this time.

(Defendant's Exhibit E-G, marked for identification)

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Q. By agreement of counsel we are also putting into evidence the additional exhibit in evidence having to do with the State Board of Education. I have no further direct examination at this time.

**[48]** *Cross Examination by Mr. Tucker:*

Q. Mr. Lankford—excuse me.

(Defendant's Exhibit E-H, Letter from Superintendent of Public Instruction, Mr. Woodrow W. Wilkerson, to Mr. E. V. Lankford, Jr., Chairman, Emporia City School Board, Emporia, Virginia, dated 22 September 1969; Defendant's Exhibit E-I, Excerpts from Minutes of State Board of Education Meeting held August 19-20, 1969, certified by Woodrow W. Wilkerson, Secretary State Board of Education)

Q. Mr. Lankford did Mr. Warriner give you a written opinion as to the constitutionality of the contracts between the City and the County? A. No, sir.

Q. Was that Opinion given to the Council in an open meeting? A. I do not attend all of the City Council meetings.

Q. When were you apprised of Mr. Warriner's opinion? A. Verbally, some time during the month of June in a discussion that we had.

Q. During the month of June? A. I can say that to the best of my recollection, it was some time during the month of June; I can't recall the exact date.

Q. You are certain it was then at the July 14th meeting of **[49]** the Council at which, according to the Minutes of the

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meeting, Mr. Warriner pointed out that the contract could be terminated through mutual agreement of both parties, or an "annexation" by the City, it was before that July 14 meeting? A. I assume it was, yes, sir.

Q. He gave you that Opinion speaking to you as one individual, not to a group? A. As I recall, yes, sir.

Q. Not in the form of a council meeting? A. No, sir.

Q. No further questions.

*Redirect Examination by Mr. Warriner:*

Q. Did I at any subsequent time, furnish you with a written opinion? A. I believe there is, after that question was answered, I think I've got something in my file as to the written.

Q. Would you check your file, please? A. You may check your file, too.

The Court: Why don't you lead him a little, Mr. Warriner?

Mr. Warriner: Sir?

The Court: Don't you have a copy of that?

Mr. Warriner: I am going to put it in [50] evidence since the question was raised by counsel for the plaintiff.

The Court: Give Mr. Lankford the date of your letter so he can find it.

A. I have it.

Q. Yes, is that the Memorandum of Authority which I gave you? A. Yes, sir.

Q. I ask that this be accepted in evidence.

The Court: What is the date of that?

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Mr. Tucker: What is the date? That is what I want.

The Court: What date did Mr. Lankford get it, that is what we are after.

Mr. Warriner: It would have been some time in November, I guess, I don't want to explore the significance of the date, I don't understand that.

The Court: That is what material that is the only thing the counsel was making inquiry about, was the date. He wasn't taking inquiry as to your correctness of your Opinion.

Mr. Warriner: Well, I would like to put this in evidence, since he's raised the question as to whether I put one in.

Mr. Tucker: I'd like to see it before it is offered into evidence.

[51] Mr. Warriner: I'm sorry.

The Court: You all take your time and look at it some time during the recess and we will get back to it.

Mr. Tucker: I can state the objection; it has no date; I object to its being entered.

The Court: Is there any further examination? I think the objection is well taken, the materiality is the date and doesn't seem to be a date. Is there any further examination of the witness?

Mr. Warriner: No, if Your Honor please.

The Court: Now, Mr. Lankford, let me ask you, you all plan on offering contracts to any teachers that are now teaching in the Greenville County? A.

We will employ teachers as needed.

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The Court: Well, will you employ somebody who is going to leave Greenville to come with you?

A. I think so, yes, sir.

The Court: Now, unquestionably, that might well have an effect on their school system as it now operates under the Court-approved plan, would it not?

A. They have, they would have a surplus of teachers [52] that they would not employ any longer.

The Court: But you would be, in effect, in competition to some extent, in hiring teachers?

A. Yes, sir.

The Court: And have you all given any consideration to the fact that you would get some teachers from that system?

A. No, sir.

The Court: Haven't given it any consideration?

A. Haven't given it any consideration, well, haven't talked to any teachers on an individual basis.

The Court: Has your School Board?

A. Well, realizing they would have a surplus of teachers in the County, we will be able to hire them.

The Court. Would it effect your plan if you could not, in fact, or law, hire any of those teachers? Would that have any basis on what you all plan on doing?



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A. Good teachers are hard to come by. I would think our budget contemplates a reasonably high salary schedule and would probably attract teachers from outside of that area. Whether we would have an adequate number, I can't say.

The Court: Do you have any alternate plan if you burn your budget, so to speak, and you are [53] not getting along with the County, do you have any reason to believe that if this doesn't work out, what is going to happen to the children of Emporia, would you continue on with the County?

A. You mean, when the contract is terminated?

The Court: Yes.

A. I would certainly hope so, but of course, the current—

The Court: You are ready to pay more money?

A. Certainly—definitely.

The Court: It is in the record as to how many children will be taken out of the system and the racial composition of each?

A. I think it is.

The Court: Yes, it is on the record.

Mr. Tucker: Yes, Your Honor.

The Court: What is the significance, or lack of significance of approval by the State, of making you a division or a district, or what? What is so important about that?

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A. Well, we feel that to establish the excellency of an educational system that we would have to have a superintendent that we can call our own; that we don't have to share him with anyone else.

[54] The Court: You have to be what, to get that?

A. We have to be a School Division.

The Court: So, as long as this suit is pending, as I understand it, the State is going to permit you to be a School Division?

A. No, sir, they tabled it.

The Court: I don't want to discontinue you, but this suit is going to be pending here for an interpretation of the law for many years.

Mr. Warriner: If the Court Please, I don't believe it is, because the pendency of the suit, it is because of the injunction.

Mr. Gray: In August, that—

The Court: Well, if you are a Division, you can hire your own Superintendent?

A. Yes, sir.

The Court: You all discuss that, as to whether you would take a superintendent, the superintendent over in Greensville.

A. No, sir, we haven't discussed any particular superintendent; we have included it in the budget, the amount of money that would secure a qualified superintendent.

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The Court: It would be your superintendent, [55] alone, not—

A. It would be our superintendent, alone.

The Court: And you would not share him with anyone else?

A. No, sir.

The Court: Did the Court's questions prompt any additional questions?

*By Mr. Warriner:*

Q. Mr. Lankford, do you contemplate any sort of a raid on the faculty of Greenville County School system?

A. No, sir.

Q. What do you—are you going to go for the Greenville County School system? A. No, sir.

Q. What do you—are you going to go for the Greenville County School system or are you going to be in the open market for school teachers? A. Well, in the open market for qualified teachers fits into our system, which we feel will be for excellent teachers.

Q. Have you set up a teachers' salary scale that would attract— A. We think.

Q. Which will attract a qualified Superintendent of Schools? A. We feel we have, sir.

Q. And, have you discussed with your consultant, Dr. Willett, the type of superintendent that you would need and the type of faculty that you would need? A. Yes, sir.

[56] Q. Do you have set up any particular programs within your system that would help you effect a transition

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to a unitary system and the maintenance of a qualified system of school excellence? A. Yes, sir, we have, and because of that, we feel that we are going to have to pay slightly higher salaries to attract people who have experience in non-graded primary schools, kindergarten, and so forth.

Q. What's that? A. Non-graded, primary-type schools.

Q. What is that? A. It is a system of school, a school system which is becoming effective in some areas. Now that takes, first of all, our budget excludes a kindergarten operation which hasn't been tried in the south side of Virginia yet, so take the kindergarten, 1, 2, 3 grades and call it a non-graded primary level of education. Realizing that, environment, background motivations of—are different for all children coming into our system. We feel that this non-graded system will allow those highly-motivated children, to go through this so-called four-year level.

The Court: You can object for the record [57] but this, I want to hear. I think I will take back what I said. It may be very material. Go ahead.

A. The primary, kindergarten, 1, 2, 3 grades would be a really, a four-year level for the average child, because in such a level of education, their learning is, they are learning the tools with which to further their training. They are learning reading, writing, arithmetic, basically, and by the time they get through the third grade and into the fourth grade, then they begin to use these tools to study particular subjects. So theoretically, you would want to have all children, when they go in the fourth grade, somewhat equal in their abilities with these tools of education. So, if you confine it to a particular graded

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system, it seems to me that does not work quite as well as a non-graded system. Non-graded systems, as I say, the average child may go through the four years. Those are highly motivated, may go through in three years.

Q. You mean the bright ones are in one class and the others in other classes? A. No, I am no expert in education. This is what I have been told and been advised.

Q. By whom? A. By Dr. Willett, who is—

[58] The Court: You mean, is that your understanding?

A. I think so, essentially, that is what it—it brings, attempts to bring, everyone up to the same degree of ability.

The Court: That will continue what, through just through the first?

A. Through the first three grades, including kindergarten.

Q. Is this kind of a system, something new? A. It is in our area, yes, sir.

Q. Is this something recommended by Dr. Willett to help assimilate a unitary school system? A. Yes, sir.

Q. Now, you mention some other advantages to help you in a transition to a unitary school system, what are they? A. Vocational education, of course, is quite important because of the drop-out level in the higher grades of school. Individual study should be stressed in more areas. We, in our budget, we have included \$25,000,00 I believe, for aids.

Q. Teachers' aids? A. Teachers' aids which will relieve a teacher of day-to-day school burden of school work, such as grading papers and allow the teacher to spend



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more time with the pupils. The teacher-pupil ratio is somewhat [59] lower than exists down there. We feel this would be a great asset. We realize we will have a small school system.

Q. How many would you have, altogether? A. Approximately 12, 1300. But a small school system is easily adaptable to these areas that we feel are excellent, in some cases, are really experiments in new types of education.

Q. What about the field of health, medical— A. The budget includes the sum of \$31,000.00 for two full-time nurses and part-time physician to give continuing health examinations, treatments, and so forth, to all children that come in the school. I think this is most valuable in a unitary system because so many of the children will not have the advantage of health examinations.

Q. To your knowledge, is Dr. Willett, has he had any experience in the field of education in transition to a unitary school system? A. He was Superintendent of the Richmond City Schools for twenty-two years and I believe that he can successfully try to make the transition to such as this.

Q. Is Dr. Willett continuing as a consultant to your school system in an effort to attempt a successful [60] unitary school system? A. Yes, sir.

The Court: What, is that your opinion?

Q. Yes.

The Court: I have ruled it out.

Q. All right sir. You mention vocational education, what does that mean? A. That means training the student

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who would expect to go no further than the high school education; training him to go out into the community with knowledge to get a good job.

Q. Mr. Lankford, if the Court permits you to do something—

The Court: Let me retract my previous thinking. I am going to let you put the plan in. I now have changed my mind, I think it may be very material to the Court's ultimate decision.

A. I might say that the budget has an element in it that includes most of these things that we have discussed.

Q. It is, to a certain extent, in evidence, but I'd like for Mr. Lankford to explain it. Go ahead and tell the Court what you plan to do for the children. A. We plan to offer them the school system with a degree of excellence that nobody has been before in our area of Virginia. We feel that we can make a unitary system work to such an extent that people [61] will say, "Now, look, this community has got a system that works and this should be applied throughout the South." We feel that we can do it.

Q. Explain this non-graded concept as best as you can.

A. I'll try to. Maybe I left out a few things. To me, in the unitary system, it would be an ideal thing, because those children who may be slow to learn may take five years to go through this non-graded area. The average children in four years and the brighter children, in three years. But, at the time they get to the four grade, they should, theoretically, all of them, have all of these tools ready to continue their education and then not be continually dropped back from grade-to-grade, as they may fail. The present system, of—

*Edward G. Lankford—for Defendants—Redirect*

Q. Let me ask you this, does this mean that that child who is doing poorly in one subject is held back in that subject, or that he is held back in all subjects? A. No, he is not held back in all subjects. They stress the subjects that he may be a poor reader and they devote a lot of time to his reading and let him move ahead as his ability goes.

Q. Does this non-graded system mean that there will be segregation on the account of color? A. No, sir.

Q. Even any some sort of a DeFacto segregation on account [62] of color? A. No, sir.

Q. Is there any part of this non-graded system that relates to the fact that children by being in contact with others, that are moving more rapidly, obtain the desire to move more rapidly themselves? A. I believe that would be correct.

Q. So you would roughly, have children from kindergarten through the third grade, working together? A. Yes, sir.

Q. All four grades working together to obtain the level of fourth grade, is that the idea? A. Yes, sir.

Q. That system, this whole system that you are relating to the Court, I assume, costs money? A. Yes, sir. Now, the non-graded primary area, in effect, doesn't cost a great deal more money. You may have the same number of teachers as you would in the normal grade, but the teachers each would probably have to be paid more because they would have to have some experience in this type of education.

Q. What indication do you have of the willingness to pay this money? A. It will be reported, we have a record in the budget, [63] the budget indicates that for the year 1970-1971, the local funds necessary to come from the

*Edward G. Lankford—for Defendants—Recross*

City is I believe, \$26,000.00. That is nearly twice as much as the City paid under the current contract year of 1967-1968. The School Board presented this budget and it was unanimously adopted to present to the City Council. The City Council unanimously accepted it for inclusion in this budget and when the time comes. I believe that indicates that the Council is willing to—

Q. Do you believe that the City, the citizenry, the tax payers, would support this budget? A. Yes, sir, I think so.

Q. If permitted by the Court to do so, Mr. Lankford, can you make a unitary school system work in a City?

A. Yes, sir, I firmly believe we can, with a great degree of excellence.

Q. Thank you.

The Court: Mr. Tucker?

Mr. Tucker: I have two or 3 questions.

*Examination by Mr. Tucker:*

Q. Do you have any idea, Mr. Lankford, as to what percentage of the teachers in the present system live within the City of Emporia? A. I don't, sir. I really don't, but there is a great [64] number; I would guess half, at least.

Q. We will assume half of the teachers in the— A. Yes, sir.

Q. System are living in Emporia; probably a lot more than that? A. Possibly so.

Q. I see, and you expect to be paying teachers higher salaries than the County will be offering? A. Our budget contemplates the increase provided by the State. I don't know specifically, of course, they haven't, the County hasn't set their budget; I don't know specifically whether



*Neil H. Tracey—for Defendants—Direct*

it will be higher. We feel we will be in range to attract desirable teachers that we need.

Q. You won't refuse to hire a teacher because he or she has been previously, or is presently, or has been previously employed by the County School Board? A. No, sir, if she was qualified and made application.

The Court: All right, you won't give any thought of amending your plan to include a provision that you would not hire any teachers with any, from the County system?

A. Yes, we would give thought to that if it meant we would be free to move in the direction we want to go.

[65] The Court: All right. Anything else? Mr. Gray?

Mr. Gray: I want to make it clear to the Court that any counsel that have been waiting—(Went off record)

This trial then at 11:30 A.M., recessed until 11:50 A.M., at which time it was reconvened.

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NEIL H. TRACEY, having been called as a witness, was duly sworn by the Clerk, and testified on his oath as follows:

*Examination by Mr. Kay:*

Q. Doctor Tracey, would you please state your full name and address? A. Neil H. Tracey, 415 Richfield Road, Chapel Hill, New York, Professor of Education at the University of New York.



*Neil H. Tracey—for Defendants—Direct*

Q. And, were, where were you born, Doctor; Tracey?

A. North Dakota.

Q. And how long did you live there? A. Twenty-two years.

Q. Would you briefly outline to the Court, your educational background? A. I received a Bachelor of Science Degree at North Dakota State University in mathematics and my Master of Education Degree at the University of South Dakota in School Administration; my Doctorate Degree at the University of Colorado in School Administration.

[66] Q. And when did you receive your Doctorate? A. 1958.

Q. Before obtaining your Doctorate, would you relate your occupational experience for the Court? A. Teacher of Mathematics and Science in high school; I was a teacher in high school for about three years; high school principal for three years; Superintendent of Schools for five years and part-time instructor in School Administration at the University of South Dakota, then the University of Colorado and then to the State Teachers College which is in South Dakota.

Q. Where did you do your teaching and where are you at present and where are you to be in September? A. In South Dakota.

The Court: The Doctor is qualified in this field.  
Mr. Warriner: No objections.

Q. When did you come to the University of New York? A. In 1958.

Q. And in what capacity have you served there? A. Basically I am a teacher and have gone through the ranks

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of professorship, assistant professor, associate professor and full professor.

Q. What are your duties as Professor of Education?

A. I teach school Administration classes primarily in [67] Central Office Administration, that is school finance planning, and so forth. Direct field studies dissertations for graduate students in school administration and incidentally, I am chairman of the administration curriculum group at the School of Education.

Q. And, as part of your duties or Professor of Education, do you do any consultation work in the public school system in New York? A. Yes, do you want me to give you a short run down on that?

Q. Give us a short run down of what type of consultations. A. All right, the, about three, there are about three kinds of consultations which have been involved. One has to do with the curriculum studies in the Waynesboro schools in New York; curriculum studies in the Ridgely area in New York and in Orange County which is the home county of Chapel Hill, School survey, which is examination of school organization and operation for planning purposes in Rockingham, New York, Orange County, Chapel Hill and Perrin County and two or three other places.

Q. Have you worked as a consultant outside of the State of New York. A. Yes, primarily in Virginia, with the administration organization pattern for Portsmouth and with the [68] annexation cases in Alexandria and Richmond and with a similar court situation in Portsmouth.

Q. Now sir, at the request of the City of Emporia, did you make a study of the school system of Greenville County? A. Yes, I examined certain elements of the evidence and visited the school system there.

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Q. What was the purpose of this study? A. The major purpose of the study was to examine the organizational pattern and the effects on that organizational pattern of the separate, or possible separate school systems for Emporia.

Q. Now, sir, at the time that you were approached to accept this assignment, did you place any conditions on your acceptance? And if so, what were they? A. Yes, I placed this basic condition on acceptance of any such assignment, that the intent of the people involved, the Emporia people in this instance, should be specifically not related to any attempt to resegregate or to avoid desegregation or to avoid integration.

Q. And, if you had ascertained that this was the intent, what was your understanding with the City? A. My understanding was that I would not serve in this capacity, at all.

[69] Q. All right, sir, now, would you describe briefly how you approached the study that you made in Emporia? A. (No response)

Q. In Greensville County? A: Well, basically I started out with the idea of examining the pattern of education as it existed in the County. The organizational pattern as the Court has ordered and is now operative, the financing, the budgetary considerations that in effect, support and direct the program that a school system might have and beyond that, some of the school visitations were to determine what conditions existed in the schools and in examination of certain facilities therein, to determine their sufficiency or effectiveness.

Q. Would you state whether or not, in your opinion, that the effect of historic segregation of races in the public schools, i.e., should be eliminated purely by proportionate

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mixing of the races? A. No, my basic contention is and has been, that elimination of the effects of segregation must be an educational solution to the problem and that no particular pattern of mixing has in and of itself, has any desirable effect.

Q. Would you elaborate a little bit on what you conceive to educational solutions to this problem? [70] A. Well, as the Court held much earlier, separation was inherently unequal. Separation has produced an inbred system as to speak both for white and for the negro group. The inbred systems have become different. So the problem is to permit difference and the Negro system is unfortunately, has become inferior. The problem is to permit the Negro child to integrate into society both in terms of general social problems and in terms of economic patterns. The educational system as it, as the means to this end and therefore particular educational programs have to be set up and put into operation in order that this may be that this integration may be completed.

Q. What types of special programs do you have reference to? A. Well, there are several items that characterize these programs. The first is a basically early access to educational resources.

Mr. Tucker: Excuse me, I didn't hear that.

A. Early access to educational resources there is characterized, while I would not like to point to the success of Head-Start, because it hasn't been completely successful, characterized by the ideas of Head-Start, characterized by the idea of this kind, characterized by a whole series of community [71] action programs that are intended to involve the child in an integrated social and educational society quite early in his development. The need in this same context, the child who is to be functional in an integrated society needs

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an early contact with the inter-races complex of the society, rather than being removed or separated. Because, there is an educational deprivation to overcome. The child usually, in this case, is Negro, but any other child or any other kind of isolated child such as an Appalachian child, or in many cases, simply a rural child in a relatively slow-moving rural community, needs the special attention to his particular set of problems and in this context, this is one of the purposes or intents of the ungraded pattern. Beyond that, excepting fulfillment of the general skills patterns of the elementary education, the person needs an opportunity to develop some kind of specifically saleable skill. Something that he can use when he moves into society. In that sense the school program has to provide him this opportunity so that he doesn't argue the point of irrelevance of the school program, but sees on the contrary, what opportunity he has is particularly relevant to what he wants to do, or [72] may be able to find to do in his community.

Q. Is a special effort required by locality and school officials to provide such system, in your opinion? A. Yes, special effort. There are two kinds of high level support and a particular orientation on the part of the public and the school officials to meet each child in this way.

Q. Have you studied the existing systems in Greenville County sufficiently to have formed an opinion as to whether it is providing this special effort in support necessary to the system that you have described? A. Well, my study was not in sufficient detail so that I could oh, pursue it down to the most minute point, but there are several items that are important. The first is, that the school system has an average county school system, which means it is supported on the average level, it has approximately average pupil-teacher ratio. It has no special organization pattern that



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would help integration. It, has no special vocational programs that would help integration. It has a left-over as many school systems do, in agricultural programs that only does not help integration, but it doesn't help anybody else. Several things that have of this [73] nature, it has comparatively limited library facilities and the organizational pattern that now exists, is essentially inflexible and the consequence of that, is that the range of opportunity is limited for a child, say, operating in a single building in a sixth grade, only.

Q. Well, sir, you are now alluding to the plan under which the County is operating, the so-called pairing plan, is that correct? A. (No response)

Q. That, of course, is part of the organizational pattern of the schools? A. Yes, sir.

Q. Would you tell the Court your opinion, from an educational standpoint, of the so-called "pairing plan" that is in effect in Greenville County? A. Well, if we start from the point of pairing, as such, I think we would have to say that Greenville County doesn't have a precisely, a pairing plan. That usually implies you have one school which has been predominantly for Negro and one school predominantly for White, and you now put them together and divide the population approximately in half, by grade levels. The Greenville County organization has, in effect, taken all of the students and then have allotted them in the [74] without regard to race or place of residence. Now, the effect of either of these, in the elementary school where it is particularly important with where it is most often used, is to divide the elementary school as a totality K through 5, K through 6, 7.

Q. By K, you mean, Kindergarten? A. Kindergarten, yes, or One through 6, 7 or 8, into two or more levels. Now,

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what that does, usually, is to place both the teaching and the resources of support teachers, the text materials, the library materials, the various supplementary instructions or instructional materials of a variety of kind on that limited level, but the children, in any given grade, have an instructional, well, I shouldn't say instructional, have an achievement range of about double the number of years as the grade designation, for instance, as you will ordinarily find in a group in the third grade, classified basically, according to age, having achievement level all the way from first grade on through to the sixth grade. You will find students in the fifth grade having an achievement level of all the way from the late first grade on through to about the tenth grade. When you shorten the range of resources to that group, you apply the resources primarily to the center of [75] the group, and you ignore either end. Greensville County is currently moving to try to reorganize this library system and it is reorganizing its libraries according to the plan that is in effect. That is in the elementary school, which is grades 1, 2, 3, it is going to put materials, primarily 1, 2, 3 and in the school, in the next school up the line, grades 3, 4 or 4, 5, I beg your pardon, is going to put materials, primarily grades 4 and 5 and this kind of thing means that if children remain basically classified by age, that in any one of these schools, the range of materials and consequently the range of instructional and independent opportunities available will be shortened for them.

Q. With what effect? A: Well, with the basic effect, opposite to that which I initially said was desirable. I said that it is desirable to be tried to provide for each child an instructional program as close to his next step in achievement as possible. If his achievement level is comparatively high for the age classification and the materials and the in-

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instructional resources are shortened, this can't be provided. Correspondingly, if achievement level is substantially at a low level, relative to his age classification and the [76] instructional material apply for shortened, then the student doesn't exist, or is reduced.

Q. Does the pairing plan have any adverse economic effect on the operation of the school system? A. Well, ordinarily, it, the item of transportation is implied and if the school system does not add to its budget in order to overcome the transportation problem, then this money will have to be taken from some other resource, that is within the budget. Otherwise,—furthermore, it implies, as transportation does, and if it is a fairly long time from the time the child is required to leave home until he gets back, much of this time on the bus, or waiting for the bus, has no useful educational purpose, and the consequences of course, are that it is essentially wasted time and energy on the part of the children. If the school system were inclined to do so, going back to these instructional resources, it might, within a given grade group, say one through three, provide the necessary range of instructional resources, but if this does not appear in the budget, then an assumption is that it has not been provided and it requires an extra effort to provide this.

Q. Then you found no such error in the present budget? [77] A. No, the Greenville budget is an increase of approximately \$20.00 per year, per child, for 1969 and 1970, over the operating budget for 1968-1969. This won't keep up with inflation, but, let alone add any kind of services. As a matter of fact, looking at the budget, it appears that certain services that were provided, are not now being provided and some monies have been transferred from various kinds of programs into the, particularly the transportation program, at this time.

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Q. Was there an increase in the transportation budget in 1969-1970 over that of the preceding year? A. Yes, sir, there is a basically, \$10,000.00 increase in the budget in the past four years; transportation costs have gone up from \$81,708, approximately \$3,100.00, \$89,700 and now to \$102,300.00 for this year. This is an estimate based upon the school system's figures.

Q. Now, sir, have you studied the plan and estimated budget prepared by Dr. Willett for the City of Emporia, which has been approved insofar as possible, for the next school year? A. Yes, I have looked at this budget and considered and secured the budget message.

Q. Would you—I would ask you if you have an opinion and [78] if so, would you tell us what your opinion is, with respect to whether this system, as proposed by the City, provides, or has the potential for providing the educational solutions that you previously referred to? A. Well, two things are involved in this. One is the basic change and organization and the other is the budget itself. The budget has explicit provision for attracting teachers who, in terms of the budget message, would be effective in both the ungraded primary and team teaching pattern. It has the addition of Kindergarten and it has by relief to some degree, a lesser proportion total budget indicated to the transportation, it has the addition of the health services, it has the addition of the certain County services. This does not say the County has some of these, but the budget provides for more proportionately of these services to each child. It has a provision not in specific, but in general terms, for a lower pupil-teacher ratio and a higher per pupil cost, in the undergrades, to permit an effective vocational program, than the vocational program now currently defines, I would say, as a general statement, that the intent, underlying this

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budget, is entirely supportive of the basic original [79] points on, well, good education for everybody, not simply the, with the integration, but a good opportunity for everyone.

Q. Will you, sir, explain to the Court, just what the concept team teaching embraces and how it works? A. Team teaching is, well, unfortunately, has several definitions, depending on who happens to be claiming it, at the moment. But in the idea sense, or the rationale for team teaching, you have seen the idea that a group of teachers each will take the responsibility before a group, usually, of upper elementary aged students. Now, the group of teachers consists of the group of four or five and the students then associated with this, would be the pupil-teacher ratio, in a group of, say 100 to 125 pupils. Now, the teachers are expected to, and provide time for planning for the educational program for these students. Then, in terms of what they perceive to be the necessary educational response to the conditions of these children, that is their achievement level and so they sub-divide the group to provide their instruction, or, they provide opportunity for students who are in need of individualized instruction for that, or in need of independent study for that, or they provide for opportunity for the group [80] to meet as an entity, as to an entirety for certain instructional situations. The argument about team teaching is that the team of teachers, because of the inter-relationships that they develop, can plan more effectively than one one teacher for the group involved. That, second, the team consists of persons who have different kinds of specializations, different kinds of talents and that then they may be used in the area of their foremost and greatest effectiveness and finally, that the group, as a group, is flexible in its changing sub-divisions



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and nature so that it may be most effectively taught, more effectively taught in any one of these.

Q. Is it true that a person in one of these non-graded, I used the word "team-teaching," but I guess it is a combination of non-graded system; it doesn't say I am in the first grade, or the second grade or the third grade, but it says I am in the primary grade? Basically, is that how it works, or is that an oversimplification of it? A. It is not quite an over-simplification, it is probably a goal. It is one not yet achieved, because we have a provision for tri-grade levels, but to switch from team teaching to the ungraded level. Now, they have much the same connotation as the group of students [81] who will be assigned to a group of teachers. The teachers will then be provided planning time, resources—the broad range of resources and so on so that they may sub-divide this group, or treat it as a whole when the occasion demands. In the ungraded primary, the idea is that each child is progressing at his own rate of achievement. This obviously requires that this rate of achievement be assessed regularly. There are as many school systems that have set up to operate this assessment on a weekly basis; this seems not to take advantage of the teacher's capability for adapting to the situation, so, probably, on a bi-weekly, or monthly basis, reassessment occurs. The progress rate of the child is determined and in a reorganization within the basic group, if it is required, then this is permitted, or, it is, within the realm of possibility. It involves the idea that teachers teach, will teach what is necessary to whomever needs it within this total age range. That each child is going through a progressive pattern leading to a competency that will permit him to enter the next grade level which is different. Usually the fourth grade then. Then it has no

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connotation for prior classification. In the sense of, say, an intelligence test, or last [82] year's achievement test, or some such thing as this, except that at some early time, some kind of assessment must be made in order that the teachers respond to the child's particular educational success. In other words, a child may be strong in mathematics and not have to be held back at all, but be weak in English and have to be in a different subject group for that.

Q. I see, he may not have to be held back for that one subject, is that it? A. Yes.

Q. Correct? A. In the case of a child in that situation, he might be progressing at what you might classify as normally in one area, and slower in another and more rapidly in another. Most people have achievement profiles, and while it is, as a matter of fact, the case of an extremely able student who is probably doing fairly well in everything and an extremely poor student is probably not doing very well in anything. For the greater portion of the people, there is a profile, that for a young lady, for example, this is partially culturally determined, of course, she will be doing quite well in reading and literature and relatively poorly in mathematics.

[83] Q. And this provides a means by which she can get special attention and instruction that she is weak in?

A. Basically the whole argument is that it provides a means by which the student gets help where he needs it, at great freedom to move independently when he doesn't need help.

Q. And this is a—state whether or not this is an educational device that is used in all schools whether they are all in the same race or segregated or integrated? A. Yes, it started out, well, first defined by the California education professor by the name of John Goodland and it has

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spread, the ungraded primary has spread all the way across the United States in all kinds of schools, with the possible exception that schools in more traditional areas have not adopted this pattern very rapidly. High schools with poor support levels who could not give the teacher the extra time or the support system, have not adopted this pattern and in general, rural schools have been less willing to adopt it than city schools.

Q. Now, does the budget, estimated budget and budget message and plan, proposed by the City of Emporia, provide what you consider to be the necessary support to effectuate these programs that you have [84] mentioned?

A. Well, as the budget is now constituted, it has specific provisions for these items and it is argued, of course, if the City continues this orientation, it should be able to fulfill this program demands.

Q. And if Emporia does what it has contemplated it is to do, in your opinion, will its system be superior to the existing system in Greenville County? A. Yes, this doesn't deny Greenville from doing this, or that they could do this, but it would be substantially superior.

Q. Will it, in your opinion, provide the programs that are necessary and desirable to make a unitary system work in the true sense of the word, work, in your opinion? A. Yes, providing programs that are good and the budget, as it is currently constructed, indicates that the attitude, a good attitude on the part of the people involved is good, it does exist, and if again continued, will be able to provide those programs. It is basically a matter of intent to concern ourselves about the child and not about his color.

Q. All right sir, the Court has expressed concern as to the effect of the separation of the City of Emporia, from the school system that it is presently a part [85] of, and

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specifically, the effect on the remaining system. Would you care to, or would you express your opinion to as far as you can, as to what that effect might be? A. Well, there are about four effects that seem important at the moment and some others that are dependent upon either a change or a continuing of the condition. First, the effect will be to reduce the number of separate school entities for the Greenville organization. Which should permit Greenville to function a little more effectively on the school organization and on transportation. I don't know that it will, but it should permit this. The effect on, in one sense, might be to provide to Greenville, an opportunity to watch Emporia to see if it in fact does what it is claiming to do and therefore, emulate it. This is largely contingent upon Greenville's willingness to build a budget similar to that of Emporia.

Q. Do you know of their intent to do so? A. No, I have no knowledge of such an intent. I was listing the questions about teachers and so on and I would suppose that the two school systems existing side by side, would be in some competition for teachers. However, Greenville will have teachers that it has no use for. That is, cannot employ, [86] in terms of the remainder of the school system and some of these might well wish to move to Emporia and probably actually live there, because it is not the case of very few teachers who function in the County Schools, actually live outside of your barn or suburban areas, they live in the urban area and, of course, these schools are all right surrounding the urban areas so the chance is good that most of the teachers in Greenville County do live in Emporia. If Greenville teachers are seeking positions, and Emporia offers more money, and the Greenville teachers are qualified, there is a possible

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effect of training over the better teachers from Greenville, by putting them in Emporia. I would presume that this could be specifically overcome in one of two or three ways and I would also presume that the teachers in the Greenville County System, at this time, might not be oriented to or meet the qualifications desired in terms of team teaching and ungraded primary that Emporia is trying to get in its teaching staff. Basically, I would think that would be about the set of effects that I could discern.

Q. Do you know what the effects on the educational process would be in the County, because of an increase of, [87] in the ratio of Negro to White children of 70-30, as compared to the existing 60-40? A. I don't know. I specifically spent some time examining the information to find out if any studies had been made that dealt with particular educational effects associated with particular proportions of Negroes and Whites in the schools systems and no real information exists that I know of that deals with this kind of explicit question. As to whether it would make a difference if it is 50-50, 45-55, 40-60 or what have you.

Q. To your knowledge, no objection has been made, or, has anybody made a study that would lead to any conclusions on that question? A. (Nodded head negatively.)

Q. Thank you, sir. No study has been made? A. No study has been made and I would not conjecture.

*Examination by Mr. Tucker:*

Q. Doctor Tracey, to move to the other extreme of the public educational system, when you talk about high schools, what is your opinion as to the advantages of a, of having larger high schools, as against smaller high schools? I mean, so far as numbers of children are concerned? A.



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Well, there are two or three basic advantages in increasing the size in high schools. The first [88] advantage is that if you offer, or wish to offer particular programs for particular groups, you will have a larger base group on which to operate. Now, let me make that a little more clear. Supposing you want to offer an instrumental music program involving a fair amount of individualized instruction and you want to offer this for the purpose of giving potential musicians a musical education in a given population. Only about 15 percent are potentially effective musicians so if the less population on which you could base this kind of thing would probably be a population of a hundred or so that would provide you with one class. If you talk only about fiddle players, you would have to have a population of much greater than that to provide you with one basic class of fiddle players. This would also apply to various other kinds of special interest patterns. On either end of the scale, whether this was special remediation or a talent development. Now, that is the major value of a large as opposed to a comparatively small school. However, to a degree and not completely, this kind of thing may be built in, to a school, if more money is provided and smaller pupil teacher ratios are accepted. What it amounts to is, that if you can get a population large enough so that 15 percent of the approximately, or 15 to 20% [89] provides a continuing instructional group and are willing to pay for the teachers for just 15 students. You have the same basic advantage, if you are willing to pay the teachers, you don't get the advantage until you have enough flexibility in the large school to assign a teacher.

Q. Over the years, I have heard all kinds of answers from educators as to what they consider an ideal size for high schools. What figure, in your estimation, makes or

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approaches the ideal size for a high school? A. All right, I understand why you have heard all of these figures, because in the first place, they tend to change over the times. A few years ago, actually in the 1930's, when most high schools were exceedingly small.—

The Court: Excuse me, Mr. Tracey, let's answer the question directly, if you will please; just tell us your idea of an ideal size of a high school.

A. All right, I think that for the maximum flexibility, and the less loss of, of identity on the part of the individual children, that a high school probably should be in the 1200-1500 range. That is the optimum that is not maximum or minimum; it is the optimum.

[90] Q. And the senior class of that high school, would probably be, about how many? A. Well, this senior class is going to have to be some place in the neighborhood in that setting, of 500, if it is a 10-12 school, or, going on down the line, since the high school might be organized on a 7 through 12 basis, to about 150.

The Court: Again that is optimum?

A. Yes, again, that is the optimum, in the center of the original figure that you asked me for, because, a high school, if you follow me, a high school is not a fixed set of grades. There are Senior High Schools; four-year high schools; five-year high schools and six-year high schools.

Q. All right, four-year high school in that setting, would have a senior class of about 300.

Q. And a five-year high school would be? A. About 500.

*Neil H. Tracey—for Defendants—Cross*

Q. About 500? A. Less than 500, 500, well, actually about 400 and something, considering the attrition over the three grades.

Q. Now, in your studying of it, did you give thought to—strike that. Did you give consideration to a better [91] organization of the entire school system? I mean, with the County and the City being in one school system?

A. Not in the sense that I have studied it carefully enough to know what I would propose as an organization, in the sense that if I were to propose an organization, it would consist at least of elementary schools operating K through 5, or K through 6. Now, however, those attendant areas were—I don't know if they were considered or not. I do not know, because that is the part I haven't examined. I don't accept the idea of fragments of the elementary pattern.

Q. All right, I recall your testimony that a child needs contact with the entire range of society, rather than being separated and one of the illustrations you pointed out was that of the rural child in the slow-moving rural communities? A. Yes.

Q. Now, let's project that the people of this area involved desired and were allowed that if the City of Emporia became a school system and the County became another school system, would that not diminish the range of society to which the rural child would be exposed?

A. I think I would have to say that it would, and, we will just leave it at that.

[92] Q. In other words, you are aware that you could not help but notice that Emporia is the mercantile center of the cement business in the center of the county and that it is essentially rural? A. That's right.

Q. If we take the isolated,—If we isolate the City

*Neil H. Tracey—for Defendants—Cross*

children we will actually be taking away from the rural children valuable contacts that they should be connected to? A. You would take some part of the range away.

Q. Yes, as an educator, and if you had the job to desegregate or organize the two systems, rather than having the job to organize one system, that is, organizing the combined system, which alternative would offer you the better opportunity of doing the better job? A. This is dependent upon a prior condition. This is dependent upon the basic willingness of the system to support and the willingness of Greenville system to support it apparently has been deteriorating in terms of its budget figures. If we could assume that Greenville County would move its support level up to the point where it would provide these programs, then I would be arguing for the entire system. But, you cannot now, that is the important part.

Q. Did you make any study to determine if there was any [93] basic difference between the people who live within the City of Emporia and those who live outside of the City of Emporia in the County, any basic differences in their attitudes? A. No.

Q. You are not prepared to say that the people are any different in their basic attitude than the people within the City will give support to people without the City, will without support if their leaders are demanding it? A. No.

Q. All right.

Mr. Gray: Your Honor, may I have one, I one moment to ask a question I think I may have to ask the Doctor?

The Court: Yes, certainly.

*Neil H. Tracey—for Defendants—Cross*

Mr. Gray: Dr. Tracey, you have several times spoken of willingness to up the budget?

A. That's correct.

Mr. Gray: Meet the needs, as the ability to up the budget also important. The wealth of the citizens, is that important, too?

A. This is important, but it is basically the case that in the southeast Virginia included and south side Virginia including that level of effort which is the amount of money per capita as related to per capita [94] income, is only at the average or below average for the United States.

Q. Did you make any studies in Greenville County, exclusive of Emporia, as to the ability of the economic state or status, in the— A. No.

Q. So, you have no knowledge of this ability? A. No.

Mr. Gray: Thank you.

Mr. Kay: No questions.

The Court: Thank you, Doctor, you may be excused.

(The witness, having been excused, withdrew from the stand.)



*George F. Lee—for Defendants—Direct*

GEORGE F. LEE, having been called as a witness, was duly sworn by the Clerk, and testified on his oath, as follows:

*Direct Examination by Mr. Warriner:*

Q. Mr. Lee, you have been previously identified as being George F. Lee, Mayor of the City of Emporia? A. Yes, sir.

Q. Your age place, and your place of residence are already in the record? A. (Nodded head)

Q. Preliminarily, Mr. Lee, I hand you a sheet of paper and ask you if you recognize them? [95] A. Yes, sir.

Q. What is the paper? A. This is a letter from your firm.

Q. To whom? A. To the City of Emporia and myself, specifically.

Q. What is the date on it? A. July 18, 1969.

Mr. Tucker: No objections.

Q. What is this letter? It speaks for itself but I would like to put this letter in evidence; it has to show, if Your Honor please, it has to do, with the contract, dated July 18, 1969.

(Defendant's Exhibit E-J, marked for identification)

Q. Mr. Lee, under your leadership and that of the City Council of Emporia, has a budget and a plan for the operation of the City schools, along the lines proposed by Mr. Willet, approved by the City School Board, been adopted? A. Yes, sir.

Q. When was it adopted? A. It was adopted at a meeting two weeks ago, I believe.

*George F. Lee—for Defendants—Direct*

Q. This was the first meeting held of the formulation of this budget? A. Yes, sir.

Q. Now, Mr. Lee, you have heard the testimony here today [96] about the problems with respect to a County School system needing and meeting and overcoming the challenge of a unitary school system. Are you a life-long resident of Greenville County and Emporia? A. Well, I came there in 1938.

Q. Where did you come from? A. From 15 miles away. South Hampton.

Q. Are you familiar with the leadership, present leadership of Greenville County? A. Very much so.

Q. Does Greenville County—

Mr. Marsh: Excuse me, Your Honor, we want to object. This testimony was gone over very thoroughly in the first hearing. We don't think it adds anything, it is part of the evidence in the case already, these very questions were asked.

The Court: I think so. Try not to repeat.

Mr. Warriner: I will limit it to one more question, Your Honor.

Q. In your opinion, will the present leadership of Greenville County adequately support a school system which will bring about a working unitary school system? A. In my opinion,—

The Court: Just a moment.

Mr. Tucker: I am just wondering what [97] the basis of opinion, whether that is a matter for his opinion, the Court, or anybody else.

*George F. Lee—for Defendants—Direct*

The Court: That may go to the weight of it.

Q. Very well.

The Court: Objection over-ruled. You don't think they can do it?

A. No, sir.

Mr. Warriner: I will develop the weight of it, if Your Honor Please. How long have you been Mayor?

A. More than ten years.

Q. Before that, did you serve on the City Council? A. Yes, sir.

Q. Are you engaged—

The Court: Let me get it straight. You think they can't do it or you think they don't want to do it?

A. I think they are willing to do it. I know they have the financial background to do it, if they would.

Q. How long did you serve on the City Council? A. Four years.

Q. Are you a business man in that area? A. Yes, sir.

Q. Up until 1967, were you a resident of the County of [98] Greenville? A. Yes, sir.

Q. Have you had in your official capacity and in your private capacity, had dealings with the Board of Supervisors of Greenville County? A. Yes, sir.

Q. Do you know each of them officially and personally?

A. Yes, sir.

*George F. Lee—for Defendants—Direct*

Q. Do you know how long they have been serving on the Board of Supervisors? A. Yes, sir.

Q. Have they been elected and reelected? A. Yes, sir.

Q. Do you have confidence, based upon your experience with these people? I have that question, I think I have given some background as to how he can form an opinion. Now, are you also familiar with the leadership of the City? A. Yes, sir.

Q. How long have you been associated with the—with that leadership?

The Court: All of his life.

A. Yes, sir. Ever since I moved from Adams Grove.

Q. Even since you moved from Adams Grove?

The Court: I understood he was the leader.

[99] Q. Is that correct? Do you believe that the leadership of the City of Emporia has the will to make a unitary school system work? A. Absolutely.

Q. What, in your opinion, would be the alternative to an independent school system for the City of Emporia? A. Your Honor, may I elaborate just a bit?

The Court: All right, sir.

A. Last year, after we left your Court and we went back home and I was determined and the members—

Q. Excuse me, Mr. Lee, it may seem like last year, it was last summer. A. Last summer, I was determined to follow your instructions by the letter of your instructions and your instructions certainly have nothing to do with any systems other than the systems you have outlined.

*George F. Lee—for Defendants—Direct*

However an upsurge came for a private school system. On the quietus, I did my best to insure the citizens of Emporia that they are the only people I deal with; don't jump into a thing like this. Let's give it an honest trial. And, our people in Emporia, by and large, have done this. However, they pulled out of the County systems as a whole and in wholesale lots and I am afraid that you are going to see so much of the exodus if we don't provide an equality for all of [100] our children. Let me say the ghettos are located in Emporia, the poor people are located in Emporia, the wealth of Emporia is not in Emporia, the wealth of our area is in Greensville County, not in the City. It would be an extra effort for the City to raise the money and we published a, in our paper, this was very bad politically, last week, that in order to support this system that we adopted, our taxes would have to be increased 30% next year. Our people will do it. We have less of the wealth in the County. Well, I am afraid our children will not have, in effect, all our children, will not have an effective public school system, because next year, this year was bad, so as far as interest, I am afraid my influence will not hold them in next year. We are going to see a degrading County or public school system and this is the last thing I want to see.

Q. No further questions.

The Court: Any cross-examination?

Mr. Tucker: No questions.

The Court: Thank you, Mr. Lee.

(The witness, having been excused, withdrew from the stand.)

Mr. Warriner: Defendant City, rests.



*George F. Lee—for Defendants—Direct*

The Court: The Defendant County, have any evidence to put on?

Mr. Gray: No evidence.

**[101]** The Court: Does the Plaintiff have any rebuttal?

Mr. Tucker: Nothing further.

**Memorandum Opinion of District Court**

[Filed March 2, 1970]

MERHIGE, District Judge.

The plaintiffs in this action filed a supplemental complaint on August 1, 1969, alleging that the added defendants, the City Council and the School Board of the City of Emporia, had taken steps to establish a city school system independent of the Greenville County system, then under a desegregation order in this suit. Emporia, a city of the second class since 1967, is surrounded by Greenville County. Through the school year 1968-69 public school pupils resident in Emporia had attended schools operated by Greenville County; the city had been reimbursing the county for this service under a contract of April 10, 1968.

On August 8, 1969, the added defendants were temporarily enjoined by this Court from any steps which would impede the implementation of the outstanding desegregation order. Subsequently the Emporia officials answered, denying the allegation that the plan for separation would frustrate the efforts of the Greenville County School Board to implement the plan embraced by the Court's order. The matter was then continued until December 18, 1969, for a hearing on whether the injunction should be made permanent.

The original action seeking relief from alleged racial discrimination in the operation of the Greenville County School System, was filed in March of 1965. Emporia was not a city under Virginia law until July 31, 1967; until that time the county was alone responsible for the public education of those within its borders. Under the contract of April 10, 1968, the county continued this service in exchange for the payment of 34.26% of the cost of the system.

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On June 21, 1968, the plaintiffs moved for additional relief. Up to that point the county-administered system had operated under a free-choice plan which, plaintiffs asserted, had not achieved constitutional compliance under *Green v. County School Board of New Kent County*, 391 U.S. 480, 88 S.Ct. 1969, 20 L.Ed.2d 716 (1968). The 1967-68 enrollment figures show the racial distribution then prevailing:

School	Students		Faculty	
	W	N	W	N
Greensville County High	719	50	39½	1
Emporia Elementary	857	46	34½	2
Wyatt High	0	809	4½	32½
Moton Elementary	0	552	0	22½
Zion Elementary	0	255	1	12½
Belfield Elementary	0	419	3	14
Greensville County Training	0	439	0	16

The two schools then attended by all the white students were and still are in the city of Emporia, as is the training school; others are in the county.

The county proposed the extension of the free choice plan for another year while a zoning or pairing plan was developed. The plaintiffs took exception. The Court ordered the county to file a pupil desegregation plan bringing the system into compliance with *Green* by January 20, 1969. The county again proposed that the free choice plan be retained with certain changes, principally involving transfers out of a pupil's regular school for special classes and faculty reassignment. As an alternative, if the first proposal were rejected, the county suggested a plan under which the high school population would be divided between the two facilities on the basis of curriculum pursued, academic or vocational. Faculties would be reassigned to achieve at least a

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75%-25% ratio in each school. Elementary school desegregation would be achieved by the transfer of individual Negroes to white schools "on the basis of standardized testing of all students."

The plaintiffs suggested the assignment of all students on the basis of grades attained to specific schools; pairing, in other words, the entire system. Elementary teachers were to follow their classes as reassigned, and high school teachers were to be shifted so that the racial balance in the Wyatt School and Greenville County High would be approximately the same.

A hearing was held on June 17, 1969, and this Court stated its findings and indicated its intention to order that the plaintiffs' plan be adopted.

By order of June 25, 1969, this Court rejected the defendants' proposals and ordered the plaintiffs' plan put into effect. Subsequently the plan was modified slightly on defendants' motion; the pupil assignments ordered on July 30, 1969, were as follows:

<i>School</i>	<i>Grades</i>
Greenville County High	10, 11, 12
Junior High (Wyatt)	8, 9
Zion Elementary	7
Belfield Elementary	5, 6
Moton Elementary	4, 5
Emporia Elementary	1, 2, 3
Greenville County Training	Special Education

On July 9, 1969, the city council met especially to formulate plans for a city school system. On July 10th the mayor sought the cooperation of county officials in selling or leasing school facilities located in Emporia. On July 14th the council instructed the city school board to take steps to create a city school division. On July 23rd the council

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requested the state board of education to authorize the establishment of such a division, which request has been tabled by the State Board "in light of matters pending in the federal court," defendants' Ex. E-1. The Emporia school board in the meantime advised the county officials that the contract would no longer be honored and that city pupils would not attend the county system in the forthcoming school year. A notice of July 31, 1969, published by the city school board, required that school age children resident in Emporia be registered and invited applications from non-residents on a tuition basis. The injunction of August 8, 1969, however, resulted in a continuation of city pupils attending the county system for the present school year.

At a hearing on December 18, 1969, the city took the position that the contract was void under state law (see defendants' Ex. E-J); this question is the subject of pending litigation brought by the city on October 1, 1969, in the state courts. The evidence shows that the city on September 30, 1969, notified the county of its view that the contract is invalid and its intention to terminate the contract under its terms, in any case, effective in July, 1971. Payments, however, were continued through the date of the December hearing. Emporia officials also have assured the Court that they have no intention of entertaining applications from nonresidents until so permitted by this Court.

At the hearing the county, unfortunately, took no position.

A resolution of the city school board of December 10, 1969, defendants' Ex. E-F, outlines the city's plan. Elementary levels through grade six would be conducted in the Emporia Elementary School building; grades seven through twelve would be housed in the Greensville County High School. Defendants' Ex. E-G includes budgetary



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projections for the new system. The city projects enrollment figures for the system at about ten percent above the number of city residents now in the public system "on the expectation that some pupils now attending other schools would return to a city-operated school system," defendants' Ex. E-F, at 1.

The city clearly contemplates a superior quality educational program. It is anticipated that the cost will be such as to require higher tax payments by city residents. A kindergarten program, ungraded primary levels, health services, adult education, and a low pupil-teacher ratio are included in the plan, defendants' Ex. E-G, at 7, 8.

The county has filed, at the Court's request, a statistical breakdown of the students and faculty in the county-administered schools, now in operation under this Court's order of July 30, 1969. The table below shows the current racial makeup of the seven schools:

<i>School</i>	<i>Students</i>		<i>Faculty</i>	
	<i>W</i>	<i>N</i>	<i>W</i>	<i>N</i>
Emporia Elementary Grades 1-3	283 30.1%	655 69.9%	17	18
Hicksford (Moton) Grades 4-5	238 37%	405 63%	11	13
Belfield Grade 6	107 30.6%	243 69.4%	7	11
Zion Grade 7	127 34.8%	238 65.2%	7	7
Junior High Grades 8-9	215 32.6%	443 67.4%	19	21
Senior High Grades 10-12	346 44.9%	424 55.1%	31	14
Training School	10 13.7%	63 86.3%	1	8

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By comparison, the county reported the following racial characteristics for the 1968-69 school year:

<i>School</i>	<i>Students</i>		<i>Faculty</i>	
	<i>W</i>	<i>N</i>	<i>W</i>	<i>N</i>
Greensville County High	720	45	39	1
Wyatt H.S. (present Jr, High)	0	829	5	34
Emporia Elementary	771	53	33	3
Moton (present Hicksford)	0	521	5	18
Zion	0	248	1	13
Greensville County Training	0	387	0	17
Belfield	0	427	2	16

The procedural status of the case at present needs clarification. The plaintiffs contend that no one has made application to this Court that its order of June 25, as modified on July 30, be amended. This is the outstanding desegregation order addressed to "the defendants herein, their successors, agents, and employees." They contend that this Court is therefore limited to the inquiry whether the city officials threaten to interfere with the implementation of the order and therefore should be permanently enjoined.

Some passages in the city officials' briefs support this contention. In their rebuttal brief they state that the city is not seeking any sort of judicial relief excepting that the injunction of August 8, 1969, be lifted. They contend that any change in the existing desegregation order would be "a matter to be resolved by the Court, the plaintiffs and Greensville County, and would not involve the city." [Rebuttal brief of January 23, at 3.] Such a position, however, is inconsistent with that taken by counsel at the December 18th hearing. Issues explored went beyond the question whether the city's initiation of its own system would necessarily clash with the administration of the

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existing pairing plan; indeed there seems to be no real dispute that this is so. The parties went on to litigate the merits of the city's plan, developing the facts in detail with the help of an expert educator. Counsel for the city stated that "at the conclusion of the evidence today, we will ask Your Honor to approve the assignment plan for the 1970-71 school year and to dissolve the injunction now, against the city, effective at the end of this school year," Tr., Dec. 18, at 11.

It seems clear that the supplemental complaint sought to join the city officials not so much as successors, in full or in part, to the official powers and interests of the original defendants, but rather as persons who intended to use state powers to interfere with the plaintiffs' enjoyment of their constitutional right to unsegregated public education. Ample precedent exists for authority to grant relief in such a case. *Faubus v. United States*, 254 F.2d 797 (8th Cir., 1958); *Lee v. Macon County Board of Education*, 231 F.Supp. 743 (M.D.Ala. 1964). Indeed such orders have issued against private parties, on occasion, even at the instance of state officials, *Kasper v. Brittain*, 245 F.2d 92 (6th Cir. 1957); *Brewer v. Hoxie School District No. 46*, 238 F.2d 91 (8th Cir. 1956). Plaintiffs did not specifically request then or since that the city officials be joined or substituted as parties defendant pursuant to Fed. Rules Civ. Proc., Rule 25(c), or Rule 25(d), 28 U.S.C.

Nevertheless, this Court has concluded that the plaintiffs' failure to so move was, under the circumstances, excusable and indeed unnecessary. The city defendants, by their actions, have made it clear that, according to state law, they have succeeded to the powers of the county board members over public school students resident in the city. They now desire to exercise these latent powers and have asked this Court to amend its orders to enable them to so do. A word about the Virginia education law aids in understanding this aspect of the case.

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When Emporia became a city the duty fell upon it to establish a school board to supervise public education in the city. §§ 22-2, 22-93, 22-97, Va.Code Ann., 1950. State law permits, however, the consolidation of a city with a county to form a single school division, with the approval of the State Board of Education, § 22-30, Va.Code Ann., 1950. In such a case a single school board may be established with the approval of both governmental units. § 22-100.2, Va.Code Ann., 1950; the individual boards would then cease to exist, § 22-100.11, Va.Code Ann., 1950. Alternatively, the two boards might remain in existence and meet jointly to choose a division superintendent, § 22-34, Va.Code Ann., 1950. There is provision as well for the establishment of jointly owned schools, § 22-7, Va.Code Ann., 1950. When a city contracts with a county for the provision of school services, moreover, there is specific provision that the county board shall include representatives of the city, § 22-99, Va.Code Ann., 1950. Therefore, once it became a city, there is no doubt that Emporia succeeded to the state-law powers and duties of actively administering public schools for its residents under one of these statutory schemes. It has not, however, until recently sought to exercise that power. Only after the June order did the city move to assume the powers that it had, by contract, delegated to the county, plaintiffs' exhibit 12.

Under federal practice, an injunction may not issue against and bind all the world. The persons whose conduct is governable by court order are defined by rule:

Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by per-

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sonal service or otherwise. Fed. Rules Civ.Proc., Rule 65(d), 28 U.S.C.

This rule fixes the scope of valid orders, and terms in a decree exceeding the rule are of no effect, *Swetland v. Curry*, 188 F.2d 841 (6th Cir. 1951); *Alemite Mfg. Co. v. Staff*, 42 F.2d 832 (2d Cir. 1930); *Baltz v. The Fair*, 178 F.Supp. 691 (N.D. Ill. 1959); *Chisolm v. Caines*, 147 F.Supp. 188 (E.D.S.C. 1954). In general, only those acting in concert with, or aiding or abetting, a party can be held in contempt for violating a court order. One whose interest is independent of that of a party and who is not availed of as a mere device for circumventing a decree is not subject to such sanctions, *United Pharmacal Corp. v. United States*, 306 F.2d 515, 97 A.L.R.2d 485 (1st Cir. 1962). The law exposes to summary punishment only those who have already had their rights adjudicated in court. Consistent with these limitations, a court will only order a public official to perform or refrain from certain acts which are within the powers conferred upon him by law, *Bell v. School Board of Powhatan County*, 321 F.2d 494 (4th Cir. 1963), and will deny relief when those parties before it are not fully empowered, under state law, to take the action requested, *Thaxton v. Vaughan*, 321 F.2d 474 (4th Cir. 1963).

Under these precedents one might conclude that, because the city officials were not parties to any of the proceedings in this case prior to the filing of the supplemental complaint, they are therefore not bound by decrees in that litigation. But a line of cases involving public officers has also evolved holding that a decree may bind one who succeeds to the powers exercised by the officer who was a party to the original suit. In *Regal Knitwear Co. v. N. L. R. B.*, 324 U.S. 9, 65 S.Ct. 478, 89 L.Ed. 661 (1945), the Supreme Court recognized that a decree might bind "successors" to a private litigant, at least if they came within



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the usual "privity" doctrines. *Lucy v. Adams*, 224 F.Supp. 79 (N.D.Ala.1963), held that the successor to a state university dean of admissions was bound by a decree against his predecessor so long as he had notice of the injunction. In *Lankford v. Gelston*, 364 F.2d 197, 205 n. 9 (4th Cir. 1966), an injunction against a police official or his successor was expressly endorsed. The injunction of June 25, 1969, as mentioned above, issued against the county officials or their successors. No one contests that the city officers had notice of the decree. The Emporia officials in a very real sense appear now to have succeeded, under state law, to the part of the county officers' powers and thus are amenable to the decree.

It is irrelevant that the city officials hold positions that differ in name from those of the original parties. Substitution in analogous situations has been effectuated under Fed. Rules Civ. Proc. Rule 25(d) 28 U.S.C., when the relevant functions have been moved from one office to another. *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 67 S.Ct. 1129, 91 L.Ed. 1375 (1947); *Toshio Joji v. Clark*, 11 F.R.D. 253 (N.D.Cal.1951); *Porter v. American Distilling Co.*, 71 F.Supp. 483 (S.D.N.Y. 1947), cf. *Skolnick v. Parsons*, 397 F.2d 523 (7th Cir. 1968).

The city might have moved for substitution under Fed. Rules Civ. Proc., Rule 25(d), but its failure to do so is quite excusable. The county officials were under contract to operate the schools, and the question of the validity of that instrument was not raised. Greenville County officials were in possession of the schools whereas the city board was by all indications asserting no control. The county board, when ordered to take certain steps in the exercise of its power over the public school pupils of the city and the county, did not protest its lack of power. It may yet possess power over both city and county residents, at least for the term of the contract. But the city's actions subsequent to

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the pairing decree, and in particular the pending suit to declare the contract void, cast great doubt on the county's authority under state law. To all appearances the city board, but for and subject to the decree of this Court ordering non-interference, now has the power under state law to administer schools for the city residents. Certainly it must have such power, even if the contract is valid, commencing July 1, 1971.

As a successor in interest to a party to the original decree, it would seem that the city school board now has sufficient standing under Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C., to move to amend the outstanding decree. Those cases holding such relief to be unavailable to nonparties concern chiefly the applications of persons who did not have an interest in the judgment identical to that of the original party, *Mobay Chemical Co. v. Hudson Foam Plastics Corp.*, 277 F.Supp. 413 (S.D.N.Y. 1967); *United States v. 140.80 Acres of Land*, 32 F.R.D. 11 (E.D.La. 1963); *United States v. International Boxing Club*, 178 F.Supp. 469 (S.D.N.Y. 1959). The present standing of the city board members is still problematical because the validity of the contract has not been finally adjudicated. But it is clear that they will enjoy the relevant powers at least in the 1971-1972 school year, and sooner if they succeed in their litigation; this puts them in a position to move to modify the decree.

The Court therefore must proceed to the merits of the city's plan, treating the school board's application, as discussed above, as a motion under Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.

The county board has provided data on the composition of the student body of each school as currently operated, broken down by race and by place of residence. The tables below are based upon that information:

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Overall System, September 1, 1969

Students by race and residence:

	<i>White</i>	<i>Negro</i>	<i>Total</i>	<i>% White</i>	<i>% Negro</i>
County:	728	1888	2616	27.8%	72.2%
City:	543	580	1123	48.3%	51.7%
Total	1282	2477	3759	34.1%	65.9% <sup>1</sup>

The establishment of separate systems would plainly cause a substantial shift in the racial balance. The two schools in the city, formerly all-white schools, would have about a 50-50 racial makeup, while the formerly all-Negro schools located in the county which, under the city's plan, would constitute the county system, would overall have about three Negro students to each white. As mentioned before, the city anticipates as well that a number of students would return to city system from private schools. These may be assumed to be white, and such returnees would accentuate the shift in proportions.

The city contemplates placing grades one through six in the Emporia Elementary School building. Such a school would have 314 Negro students and 270 white; 46.2% white and 53.8% Negro. A city high school incorporating grades seven through twelve would have 252 Negro students and 271 white; this would make for a ratio of 51.8% white to 48.2% Negro pupils.

<sup>1</sup> Figures secured from Greenville County school system; total students include 11 white and 9 Negro, who apparently reside outside both county and city.

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The impact of separation in the county would likewise be substantial. The distribution of county residents, by grade and race, is as follows:

	<i>White</i>	<i>Negro</i>
Grades 1-3	167—26.3%	468—73.7%
Grades 4-5	142—31.1%	314—68.9%
Grade 6	57—23.5%	185—76.5%
Grades 7-9	192—27.5%	506—72.5%
Grades 10-12	161—30.6%	365—69.4%

These figures should be compared with the current percentages reported by the county, given in a table above. At each level the proportion of white pupils falls by about four to seven percent; at the high school level the drop is much sharper still.

The motives of the city officials are, of course, mixed. Ever since Emporia became a city consideration has been given to the establishment of a separate city system. A second choice was some form of joint operating arrangement with the county, but this the county would not assent to. Only when served with an "ultimatum" in March of 1968, to the effect that city students would be denied access to county schools unless the city and county came to some agreement, was the contract of April 10, 1968, entered into. Not until June of 1969 was the city advised by counsel that the contract was, in all probability, void under state law. The city then took steps to have the contract declared void and in any event to terminate it as soon as possible.

Emporia's position, reduced to its utmost simplicity, was to the effect that the city leaders had come to the conclusion that the county officials, and in particular the board of supervisors, lacked the inclination to make the court-ordered unitary plan work. The city's evidence was to the effect that increased transportation expenditures would have to be

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made under the existing plan, and other additional costs would have to be incurred in order to preserve quality in the unitary system. The city's evidence, uncontradicted, was to the effect that the board of supervisors, in their opinion, would not be willing to provide the necessary funds.

While it is unfortunate that the county chose to take no position on the instant issue, the Court recognizes the city's evidence in this regard to be conclusions; and without in any way impugning the sincerity of the respective witnesses' conclusions, this Court is not willing to accept these conclusions as factual simply because they stand uncontradicted. Assuming *arguendo*, however, that the conclusions aforementioned are indeed valid, then it would appear that the Court ought to be extremely cautious before permitting any steps to be taken which would make the successful operation of the unitary plan even more unlikely.

The Court does find as a fact that the desire of the city leaders, coupled with their obvious leadership ability, is and will be an important facet in the successful operation of any court-ordered plan.

Dr. Tracey, a professor of education at Columbia University, felt that the county budget had not even been increased sufficiently to keep up with inflation in the 1969-1970 year, and that it seemed that certain cutbacks had been made in educational programs, mainly to pay for increased transportation costs. In Dr. Tracey's opinion the city's projected budget, including higher salaries for teachers, a lower pupil-teacher ratio, kindergarten, ungraded primary schooling, added health services, and vocational education, will provide a substantially superior school system. He stated that the smaller city system would not allow a high school of optimum size, however. Moreover, the division of the existing system would cut off county pupils from exposure to a somewhat more urban society. In his opinion as an educator, given community support for the programs he



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envisioned, it would be more desirable to apply them throughout the existing system than in the city alone.

While the city has represented to the Court that in the operation of any separate school system they would not seek to hire members of the teaching staff now teaching in the county schools, the Court does find as a fact that many of the system's school teachers live within the geographical boundaries of the city of Emporia. Any separate school system would undoubtedly have some effect on the teaching staffs of the present system.

Dr. Tracey testified that his studies concerning a possible separate system were conducted on the understanding that it was not the intent of the city people to "resegregate" or avoid integration. The Court finds that, in a sense, race was a factor in the city's decision to secede. This Court is satisfied that the city, if permitted, will operate its own system on a unitary basis. But this does not exclude the possibility that the act of division itself might have foreseeable consequences that this Court ought not to permit. Mr. Lankford, chairman of the city school board, stated:

Race, of course, affected the operation of the schools by the county, and I again say, I do not think, or we felt that the county was not capable of putting the monies in and the effort and the leadership into a system that would effectively make a unitary system work \* \* \*, Tr.Dec. 18, at 28.

Mr. Lankford stated as well that city officials wanted a system which would attract residents of Emporia and "hold the people in public school education, rather than drive them into a private school \* \* \*," Tr.Dec. 18, at 28.

Under *Monroe v. Board of Commissioners*, 391 U.S. 450, 88 S.Ct. 1700, 20 L.Ed.2d 733 (1968), and under principles derived from *Brown v. Board of Education*, 347 U.S.

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483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), federal courts cannot permit delay or modification in plans for the dismantling of dual school systems for the purpose of making the public system more palatable to some residents, in the hopes that their flight to private schools might be abated. The inevitable consequence of the withdrawal of the city from the existing system would be a substantial increase in the proportion of whites in the schools attended by city residents, and a concomitant decrease in the county schools. The county officials, according to testimony which they have permitted to stand un rebutted, do not embrace the court-ordered unitary plan with enthusiasm. If secession occurs now, some 1,888 Negro county residents must look to this system alone for their education, while it may be anticipated that the proportion of whites in county schools may drop as those who can register in private academies. This Court is most concerned about the possible adverse impact of secession on the effort, under Court direction, to provide a unitary system to the entire class of plaintiffs. This is not to say that the division of existing school administration areas, while under desegregation decree, is impermissible. But this Court must withhold approval "if it cannot be shown that such a plan will further rather than delay conversion to a unitary, nonracial, nondiscriminatory school system," *Monroe v. Board of Commissioners*, supra, 391 U.S. 459, 88 S.Ct. 1705. As a court of equity charged with the duty of continuing jurisdiction to the end that there is achieved a successful dismantling of a legally imposed dual system, this Court cannot approve the proposed change.

This Court's conclusion is buttressed by that of the district court in *Burleson v. County Board of Election Commissioners*, 308 F.Supp. 352 (E.D.Ark., Jan. 22, 1970). There, a section of a school district geographically separate from the main portion of the district and populated princi-

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pally by whites was enjoined from seceding while desegregation was in progress. The Court so ruled not principally because the section's withdrawal was unconstitutionally motivated, although the Court did find that the possibility of a lower Negro population in the schools was "a powerful selling point," *Burleson v. County Board of Election Commissioners*, supra, 308 F.Supp. 357. Rather, it held that separation was barred where the impact on the remaining students' right to attend fully integrated schools would be substantial, both due to the loss of financial support and the loss of a substantial proportion of white students. This is such a case.

If Emporia desires to operate a quality school system for city students, it may still be able to do so if it presents a plan not having such an impact upon the rest of the area now under order. The contractual arrangement is ended, or soon will be. Emporia may be able to arrive at a system of joint schools, within Virginia law, giving the city more control over the education its pupils receive. Perhaps, too, a separate system might be devised which does not so prejudice the prospects for unitary schools for county as well as city residents. This Court is not without the power to modify the outstanding decree, for good cause shown, if its prospective application seems inequitable.

**Order of District Court****[filed March 2, 1970]**

For the reasons assigned in the memorandum of the Court this day filed, and deeming it proper so to do, it is **ADJUDGED and ORDERED**:

1. That the motion of the defendants, council of the City of Emporia and the members thereof, and the School Board of the City of Emporia and the members thereof, to dissolve the Court's injunction heretofore entered on August 8, 1969, be, and the same is hereby, denied, and deeming it proper so to do it is further **ADJUDGED, ORDERED and DECREED** that said order of August 8, 1969, shall remain in full force and effect until further order of this Court.

2. That the motion of the defendant School Board of the City of Emporia to modify the decree of this Court entered on June 25, 1969, as modified on July 30, 1969, be, and the same is hereby, denied.

Let the Clerk send copies of this order to all counsel of record.

/s/ **ROBERT R. MERHIGE, JR.**  
United States District Judge

**March 2, 1970.**

# **Opinions of Court of Appeals**

United States Court of Appeals for the Fourth Circuit

No. 14552

PECOLA ANNETTE WRIGHT, ET AL., APPELLEES

v.

COUNCIL OF THE CITY OF EMPORIA AND THE MEMBERS  
THEREOF, AND SCHOOL BOARD OF THE CITY OF EMPORIA  
AND THE MEMBERS THEREOF, APPELLANTS

Appeal from the United States District Court for the  
Eastern District of Virginia, at Richmond

ROBERT R. MERHIGE, JR., District Judge

Argued October 8, 1970—Decided March 23, 1971

Before HAYNSWORTH, Chief Judge, BOREMAN, BRYAN,  
WINTER, and CRAVEN, Circuit Judges sitting en  
banc\*

*John F. Kay, Jr., and D. Dortch Warriner (War-  
riner, Outten, Slagle & Barrett; and Mays, Valentine,  
Davenport & Moore on brief) for Appellants, and S.  
W. Tucker (Henry L. Marsh, III, and Hill, Tucker  
& Marsh; and Jack Greenberg, James M. Nabrit, III,  
and Norman Chachkin on brief) for Appellees.*

**CRAVEN, Circuit Judge:** In this case and two  
others now under submission en banc we must deter-  
mine the extent of the power of state government to

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\*Judge Sobeloff did not participate. Judge Butzner disqualified  
himself because he participated as a district judge in an earlier  
stage of this case.



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redesign the geographic boundaries of school districts.<sup>1</sup> Ordinarily, it would seem to be plenary but in school districts with a history of racial segregation enforced through state action, close scrutiny is required to assure there has not been gerrymandering for the purpose of perpetuating invidious discrimination.

Each of these cases involve a county school district in which there is a substantial majority of black students out of which was carved a new school district comprised of a city or a city plus an area surrounding the city. In each case, the resident students of the new city unit are approximately 50 percent black and 50 percent white. In each case, the district court enjoined the establishment of the new school district. In this case, we reverse.

## I

If legislation creating a new school district produces a shift in the racial balance which is great enough to support an inference that the purpose of the legislation is to perpetuate segregation, and the district judge draws the inference, the enactment falls under the Fourteenth Amendment and the establishment of such a new school district must be enjoined. See *Gomillion v. Lightfoot*, 364 U.S. 399 (1960). Cf. *Haney v. County Board of Education of Sevier County*, 410 F. 2d 920 (8th Cir. 1969); *Burleson v. County Board of Election Commissioners of Jefferson County*, 308 F. Supp. 352 (E.D. Ark.) aff'd — F. 2d —, No. 20228 (8th Cir. Nov. 18, 1970). But where the shift is merely a modification of the racial ratio rather than effective resegregation the problem becomes more difficult.

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<sup>1</sup> The other two cases are *United States v. Scotland Neck City Board of Education*, — F. 2d —, Nos. 14929 and 14930 (4th Cir. —, 1971) and *Turner v. Littleton-Lake Gaston School District*, — F. 2d —, No. 14990 (4th Cir. —, 1971).

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The creation of new school districts may be desirable and/or necessary to promote the legitimate state interest of providing quality education for the state's children. The refusal to allow the creation of any new school districts where there is any change in the racial makeup of the school districts could seriously impair the state's ability to achieve this goal. At the same time, the history of school integration is replete with numerous examples of actions by state officials to impede the mandate of *Brown v. Board of Education*, 349 U.S. 294 (1955) (*Brown II*). There is serious danger that the creation of new school districts may prove to be yet another method to obstruct the transition from racially separated school systems to school systems in which no child is denied the right to attend a school on the basis of race. Determining into which of these two categories a particular case fits requires a careful analysis of the facts of each case to discern the dominant purpose of boundary realignment. If the creation of a new school district is designed to further the aim of providing quality education and is attended secondarily by a modification of the racial balance, short of resegregation, the federal courts should not interfere. If, however, the primary purpose for creating a new school district is to retain as much of separation of the races as possible, the state has violated its affirmative constitutional duty to end state supported school segregation. The test is much easier to state than it is to apply.

## II

Emporia became a city of the so-called second class on July 31, 1967, pursuant to a statutory procedure established at least as early as 1892. See 3 Va. Code § 15.1-978 to -998 (1950); Acts of the Assembly 1891-92, ch. 595. Prior to that time it was an incorporated

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town and as such was part of Greenville County. At the time city status was attained Greenville County was operating public schools under a freedom of choice plan approved by the district court, and *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), invalidating freedom of choice unless it "worked," could not have been anticipated by Emporia, and indeed, was not envisioned by this court. *Bowman v. County School Board of Charles City County*, 382 F. 2d 326 (4th Cir. 1967). The record does not suggest that Emporia chose to become a city in order to prevent or diminish integration. Instead, the motivation appears to have been an unfair allocation of tax revenues by county officials.

One of the duties imposed on Emporia by the Virginia statutes as a city of the second class was to establish a school board to supervise the public education of the city's children. Under the Virginia statutes, Emporia had the option of operating its own school system or to work out one of a number of alternatives under which its children would continue to attend school jointly with the county children. Emporia considered operating a separate school system but decided it would not be practical to do so immediately at the time of its independence. There was an effort to work out some form of joint operation with the Greenville County schools in which decision making power would be shared. The county refused. Emporia finally signed a contract with the county on April 10, 1968, under which the city school children would attend schools operated by the Greenville County School Board in exchange for a percentage of the school system's operating cost. Emporia agreed to this form of operation only when given an ultimatum by the county in March 1968 that it would stop educating the city children mid-term unless some agreement was reached.

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At the same time that the county was engaged in its controversy with Emporia about the means of educating the city children, the county was also engaged in a controversy over the elimination of racial segregation in the county schools. Until sometime in 1968, Greenville County operated under a freedom of choice plan. At that time the plaintiffs in this action successfully urged upon the district court that the freedom of choice plan did not operate to disestablish the previously existing dual school system and thus was inadequate under *Green v. County School Board of New Kent County, supra*. After considering various alternatives, the district court, in an order dated June 25, 1969, paired all the schools in Greenville County.

Also in June 1969, Emporia was notified for the first time by counsel that in all probability its contract with the county for the education of the city children was void under state law. The city then filed an action in the state courts to have the contract declared void and notified the county that it was ending its contractual relationship forthwith. Parents of city school children were notified that their children would attend a city school system. On August 1, 1969, the plaintiffs filed a supplemental complaint seeking an injunction against the City Council and the City School Board to prevent the establishment of a separate school district. A preliminary injunction against the operation of a separate system was issued on August 8, 1969. The temporary injunction was made permanent on March 3, 1969.<sup>2</sup>

The Emporia city unit would not be a white island in an otherwise heavily black county. In fact, even in

<sup>2</sup> The decision of the court below is reported as *Wright v. County School Board of Greenville County*, 309 F. Supp. 671 (E.D. Va. 1970).



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Emporia there will be a majority of black students in the public schools, 52 percent black to 48 percent white. Under the plan presented by Emporia to the district court, all of the students living within the city boundaries would attend a single high school and a single grade school. At the high school there would be a slight white majority, 48 percent black and 52 percent white, while in the grade school there would be a slight black majority, 54 percent black and 46 percent white. The city limits of Emporia provide a natural geographic boundary for a school district.

The student population of the Greenville County School District without the separation of the city unit is 66 percent black and 34 percent white. The students remaining in the geographic jurisdiction of the county unit after the separation would be 72 percent black and 28 percent white. Thus, the separation of the Emporia students would create a shift of the racial balance in the remaining county unit of 6 percent. Regardless of whether the city students attend a separate school system, there will be a substantial majority of black students in the county system.

Not only does the effect of the separation not demonstrate that the primary purpose of the separation was to perpetuate segregation, but there is strong evidence to the contrary. Indeed, the district court found that Emporia officials had other purposes in mind. Emporia hired Dr. Neil H. Tracey, a professor of education at the University of North Carolina, to evaluate the plan adopted by the district court for Greenville County and compare it with Emporia's proposal for its own school system. Dr. Tracey said his studies were made with the understanding that it was not the intent of the city to resegregate. He testified that the plan adopted for Greenville County would require additional expenditures for transpor-



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tation and that an examination of the proposed budget for the Greenville County Schools indicated that not only would the additional expenditures not be forthcoming but that the budget increase over the previous year would not even keep up with increased costs due to inflation. Emporia on the other hand proposed increased revenues to increase the quality of education for its students and in Dr. Tracey's opinion the proposed Emporia system would be educationally superior to the Greenville system. Emporia proposed lower student teacher ratios, increased per pupil expenditures, health services, adult education, and the addition of a kindergarten program.

In sum, Emporia's position, referred to by the district court as "uncontradicted," was that effective integration of the schools in the whole county would require increased expenditures in order to preserve education quality, that the county officials were unwilling to provide the necessary funds, and that therefore the city would accept the burden of educating the city children. In this context, it is important to note the unusual nature of the organization of city and county governments in Virginia. Cities and counties are completely independent, both politically and geographically. See *City of Richmond v. County Board*, 199 Va. 679, 684 (1958); *Murray v. Roanoke*, 192 Va. 321, 324 (1951). When Emporia was a town, it was politically part of the county and the people of Emporia were able to elect representatives to the county board of supervisors. When Emporia became a city, it was completely separated from the county and no longer has any representation on the county board. In order for Emporia to achieve an increase in school expenditures for city schools it would have to obtain the approval of the Greenville County Board of

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Supervisors whose constituents do not include city residents.

Determining what is desirable or necessary in terms of funding for quality education is the responsibility of state and school district officers and is not for our determination. The question that the federal courts must decide is, rather, what is the primary purpose of the proposed action of the state officials. See *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065 (1969). Is the primary purpose a benign one or is the claimed benign purpose merely a cover-up for racial discrimination? The district court must, of course, consider evidence about the need for and efficacy of the proposed action to determine the good faith of the state officials' claim of benign purpose. In this case, the court did so and found explicitly that "[t]he city clearly contemplates a superior quality education program. It is anticipated that the cost will be such as to require higher tax payments by city residents." 309 F. Supp. at 674. Notably, there was no finding of discriminatory purpose, and instead the court noted its satisfaction that the city would, if permitted, operate its own system on a unitary basis.

We think the district court's injunction against the operation of a separate school district for the City of Emporia was improvidently entered and unnecessarily sacrifices legitimate and benign educational improvement. In his commendable concern to prevent resegregation—under whatever guise—the district judge momentarily overlooked, we think, his broad discretion in approving equitable remedies and the practical flexibility recommended by *Brown II* in reconciling public and private needs. We reverse the judgment of the district court and remand with instructions to dissolve the injunction.

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Because of the possibility that Emporia might institute a plan for transferring students into the city system from the county system resulting in resegregation,<sup>3</sup> or that the hiring of teachers to serve the Emporia school system might result in segregated faculties, the district court is directed to retain jurisdiction.

*Reversed and remanded.*

SOBELOFF, *Senior Circuit Judge*, with whom WINTER, *Circuit Judge*, joins, dissenting and concurring specially: In respect to Nos. 14929 and 14930, *United States v. Scotland Neck City Board of Education*, — F. 2d — (4th Cir. 1971), and No. 14990, *Turner v. Littleton-Lake Gaston School District*, — F. 2d — (4th Cir. 1971), the two cases in which I participated, I dissent from the court's reversal in *Scotland Neck* and concur in its affirmance in *Littleton-Lake Gaston*. I would affirm the District Court in each of those cases. I join in Judge Winter's opinion, and since he has treated the facts analytically and in detail, I find it unnecessary to repeat them except as required in the course of discussion. Not having participated in No. 14552, *Wright v. Council of City of Emporia*, — F. 2d — (4th Cir. 1971), I do not vote on that appeal, although the views set forth below necessarily reflect on that decision as well, since the principles enunciated by the majority in that case are held to govern the legal issue common to all three of these school cases.

<sup>3</sup> A notice of August 31, 1969, invited applications from the county. Subsequently, the city assured the district court it would not entertain such applications without court permission.

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### I

The history of the evasive tactics pursued by white communities to avoid the mandate of *Brown v. Board of Education*, 349 U.S. 294 (1955), is well documented. These have ranged from outright nullification by means of massive resistance laws<sup>1</sup> and open and occasionally violent defiance,<sup>2</sup> through discretionary pupil assignment laws<sup>3</sup> and public tuition grants in support of private segregated schools,<sup>4</sup> to token integration plans parading under the banner "freedom-

<sup>1</sup> See *Duckworth v. James*, 267 F. 2d 224 (4th Cir. 1959); *Bush v. Orleans Parish School Bd.*, 188 F. Supp. 916 (E.D. La. 1960), *aff'd per curiam*, 365 U.S. 569 (1961); *Bush v. Orleans Parish School Bd.*, 187 F. Supp. 42 (E.D. La. 1960), *aff'd Per curiam*, 365 U.S. 569 (1961); *Aaron v. McKinley*, 173 F. Supp. 944 (E.D. Ark. 1959); *aff'd sub nom., Faubus v. Aaron*, 361 U.S. 197 (1959); *James v. Almond*, 170 F. Supp. 331 (E.D. Va. 1959), *app. dis.*, 359 U.S. 1006 (1959); *Harrison v. Day*, 200 Va. 439, 106 S.E. 2d 636 (1959) (decided the same day as *James v. Almond*, *supra*).

<sup>2</sup> See *Cooper v. Aaron*, 358 U.S. 1 (1958); *Armstrong v. Board of Education of City of Birmingham, Ala.*, 323 F. 2d 333 (5th Cir. 1963), *cert. denied sub nom., Gibson v. Harris*, 376 U.S. 908 (1964); *Brewer v. Hoxie School District No. 46*, 238 F. 2d 91 (8th Cir. 1956); *Holmes v. Danner*, 191 F. Supp. 394 (M.D. Ga. 1961), *stay denied*, 364 U.S. 939 (1961).

<sup>3</sup> See *Northcross v. Board of Education of City of Memphis*, 302 F. 2d 818 (6th Cir. 1962); *Manning v. Board of Public Instruction*, 277 F. 2d 370 (5th Cir. 1960); *Gibson v. Board of Public Instruction, Dade County, Fla.*, 272 F. 2d 763 (5th Cir. 1959); *Orleans Parish School Board v. Bush*, 242 F. 2d 156 (5th Cir. 1957); *United States Commission on Civil Rights. Civil Rights USA—Public Schools, Southern States*, 2-17 (1962).

<sup>4</sup> See *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Hall v. St. Helena Parish School Board*, 197 F. Supp. 649 (E.D. La. 1961, *aff'd*, 368 U.S. 515 (1962)).



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of-choice."\* One by one these devices have been condemned by the Supreme Court:

[T]he constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." *Cooper v. Aaron*, 358 U.S. 1, 17 (1958).

Neither these agencies, nor school boards, nor local communities have the right to put roadblocks in the way of effective integration. The Court has declared that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20 (1969).

Today, I fear, we behold the emergence of a further stratagem—the carving out of new school districts in order to achieve racial compositions more acceptable to the white community. The majority frankly acknowledges the "serious danger that the creation of new school districts may prove to be yet another method to obstruct the transition from racially separate school systems to school systems in which no child is denied the right to attend a school on the basis of race," *Emporia, supra* at 4. However, the court fashions a new and entirely inappropriate doctrine to avert that danger. It directs District Courts to weigh and assess the various purposes that may have moved

\* See *Green v. County School Board*, 391 U.S. 430 (1968); *Raney v. Board of Education*, 391 U.S. 443 (1968); *Monroe v. Board of Commissioners*, 391 U.S. 450 (1968).



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the proponents of the new school district, with the objective of determining which purpose is dominant. District Courts are told to intercede *only* if they find that racial considerations were the *primary* purpose in the creation of the new school units.\* I find no precedent for this test and it is neither broad enough nor rigorous enough to fulfill the Constitution's mandate. Moreover, it cannot succeed in attaining even its intended reach, since resistant white enclaves will quickly learn how to structure a proper record—shrill with protestations of good intent, all consideration of racial factors muted beyond the range of the court's ears.'

If challenged state action has a racially discriminatory effect, it violates the equal protection clause unless a compelling and overriding legitimate state interest is demonstrated. This test is more easily applied, more fully implements the prohibition of the Fourteenth Amendment and has already gained firm root in the law. The Supreme Court has explicitly applied this test to state criminal statutes which on their face establish racial classifications. In 1964, striking down a Florida criminal statute which forbade a man and woman of different races to "habitually live in and occupy in the nighttime the same room," the Court stated in an opinion written by Justice White:

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\* The majority's test as stated in *Emporia, supra*, is as follows: "Is the primary purpose a benign one or is the claimed benign purpose merely a cover-up for racial discrimination?"

' The impracticability of the majority's test is highlighted by the dilemma in which the District Judges found themselves in *Scotland Neck*: "In ascertaining such a subjective factor as motivation and intent, it is of course impossible for this Court to accurately state what proportion each of the above reasons played in the minds of the proponents of the bill, the legislators or the voters of Scotland Neck \* \* \*. *United States v. Halifax County Board of Education*, 314 F. Supp. 65, 72 (E.D.N.C. 1970)."

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Normally, the widest discretion is allowed the legislative judgment \* \* \*; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious. [Citations] But we deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications "constitutionally suspect," *Bolling v. Sharpe*, 347 U.S. 497, 499; and subject to the most "rigid scrutiny," *Korematsu v. United States*, 323 U.S. 214, 216; and "in most circumstances irrelevant" to any constitutionally acceptable legislative purpose, *Hirabayashi v. United States*, 320 U.S. 810, 100.

*McLaughlin v. Florida*, 379 U.S. 184, 191-92 (1964). Thus, the Court held that the proper test to apply in that case was "whether there *clearly appears* in the relevant materials some *overriding* statutory purpose *requiring* the proscription of the specified conduct when engaged in by a white and a Negro, but not otherwise." *Id.* at 192 [emphasis added]. To the further argument that the Florida statute should be upheld because ancillary to and serving the same purpose as an anti-miscegenation statute presumed valid for the purpose of the case, the Court replied:

There is involved here an exercise of the state police power which trenches upon the constitutionally protected freedom from invidious official discrimination based on race. Such a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, as we have said, and will be upheld only if it is

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*necessary*, and not merely rationally related, to the accomplishment of a permissible state policy. *Id.* at 196 [emphasis added].

There were no dissents in the *McLaughlin* case. The two concurring opinions serve to underline and buttress the test applied by the majority. Justice Harlan, joining the Court's opinion, added:

I agree with the Court \* \* \* that necessity, not mere reasonable relationship, is the proper test, see *ante*, pp. 195-196. *NAACP v. Alabama*, 377 U.S. 288, 307-308; *Saia v. New York*, 334 U.S. 558, 562; *Martin v. Struthers*, 319 U.S. 141, 147; *Thornhill v. Alabama*, 310 U.S. 88, 96; *Schneider v. State*, 308 U.S. 147, 161, 162, 164; see *McGowan v. Maryland*, 366 U.S. 420, 466-467 (Frankfurter, J. concurring).

The fact that these cases arose under the principles of the First Amendment does not make them inapplicable here. Principles of free speech are carried to the States only through the Fourteenth Amendment. The necessity test which developed to protect free speech against state infringement should be equally applicable in a case involving state racial discrimination—prohibition of which lies at the very heart of the Fourteenth Amendment.

*Id.* at 197. Justice Stewart, speaking for himself and Justice Douglas, expressed the view that the majority's test did not go far enough as applied to a criminal statute because no overriding state purpose could exist.

\* \* \* I cannot conceive of a valid legislative purpose under our Constitution for a state law which makes the color of a person's skin the test of whether his conduct is a criminal offense. \* \* \* I think it is simply not possible for a state law to be valid under our Constitution which makes the criminality of an act depend upon the race of the actor.

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*Id.* at 198.

Three years later the Court dealt with a Virginia statute prohibiting interracial marriages. The statute was determined to be unconstitutional under the *McLaughlin* test, expressed here in these terms:

At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the "most rigid scrutiny," *Korematsu v. United States*, 323 U.S. 214, 216 (1944), and, if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate. \* \* \*

There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification.

*Loving v. Virginia*, 388 U.S. 1, 11 (1967) [emphasis added]. Justice Stewart filed a separate concurring opinion—reiterating his belief that there could never be a sufficiently compelling state purpose to justify a criminal statute based on racial classification. *Id.* at 13.

Although *McLaughlin* and *Loving* dealt with criminal statutes and express racial classifications, numerous lower court decisions apply the strict "compelling" or "overriding" purpose standard in the civil area as well as the criminal, and extend its application to facially neutral state action which, in reality, is racially discriminatory in its effect. The definitive case is *Jackson v. Godwin*, 400 F. 2d 529. (5th Cir. 1968), in which Judge Tuttle meticulously and exhaustively examines the lower court cases, including those "which have struck down rules and regulations which on their face appear to be non-discriminatory but which in practice and effect, if not purposeful design, impose a



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heavy burden on Negroes and not on whites, and operate in a racially discriminatory manner." *Id.* at 538-39 [emphasis added]. He concludes his analysis with this formulation of the constitutional standard:

In both the areas of racial classification and discrimination and First Amendment freedoms, we have pointed out that stringent standards are to be applied to governmental restrictions in these areas, and rigid scrutiny must be brought to bear on the justifications for encroachments on such rights. The State must strongly show some substantial and controlling interest which requires the subordination or limitation of these important constitutional rights, and which justifies their infringement, [citations]; and in the absence of such compelling justification the state restrictions are impermissible infringements of these fundamental and preferred rights. *Id.* at 541.

The most recent application of the "compelling and overriding state interest" test is to be found in the Fifth Circuit's decision in *Hawkins v. Town of Shaw*, F. 2d (5th Cir. 1971). The plaintiffs, Negro residents of Shaw, Mississippi, alleged racial discrimination by town officials in the provision of various municipal services. The District Court dismissed the complaint, applying a test akin to that used by the majority in this case: "If actions of public officials are shown to have rested upon rational considerations, irrespective of race or poverty, they are not within the condemnation of the Fourteenth Amendment, and may not be properly condemned upon judicial review." *Hawkins v. Town of Shaw*, 303 F. Supp. 1162, 1168 (N.D. Miss. 1969). The Fifth Circuit reversed, pointing to the standard set forth in *Jackson v. Godwin*, *supra*, and stating, "In applying this test, defendants' actions may be justified only if they show a compel-



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ling state interest." *Hawkins v. Town of Shaw*, F. 2d (5th Cir. 1971) (slip opinion at 3).

In *Hawkins* the Fifth Circuit specifically considered the relevance of the defendant's "intent," or "purpose" as the majority in our case would label it. Conceding that "the record contains no direct evidence aimed at establishing bad faith, ill will or an evil motive on the part of the Town of Shaw and its public officials," *Id.* at (slip opinion at 12), the court held: "Having determined that no compelling state interests can possibly justify the discriminatory results of Shaw's administration of municipal services, we conclude that a violation of equal protection has occurred." *Id.* at (slip opinion at 13) [emphasis in original text].

Just as Shaw's administration of municipal services violates the constitutional guarantee of equal protection, so too does the creation of the new Scotland Neck School District.\* The challenged legislation carves an enclave, 57% white and 43% black, from a previously 22% white and 77% black school system. No compelling or overriding state interest justifies the new district, and its formation has a racially discriminatory effect by allowing the white residents of Scotland Neck to shift their children from a school district where they are part of a 22% minority to one where they constitute a 57% majority.

The prevailing opinion draws comfort from the fact that the new school district, because all children in the same grade will attend the same school, will be "integrated throughout." I dare say a 100% white

\* Since even the majority concedes that the Littleton-Lake Gaston School District must be enjoined as a racially discriminatory scheme in violation of the Fourteenth Amendment, I do not discuss the facts of that case.

\* One percent of the pupils in Halifax County are Indians.

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school district would also be "integrated throughout." The relevant question is what *change* in degree of integration has been effected by the creation of the new district. Here the change is an increase in the percentage of white pupils from 22% to 57%. The Constitution will no more tolerate measures establishing a ratio of whites to blacks which the whites find *more* acceptable than it will measures totally segregating whites from blacks. The 35% shift here is no less discriminatory because it is a shift from 22% to 57% than if it were one from 65% to 100%.<sup>10</sup>

The majority opinion makes the puzzling concession that:

If the effect of this act was the continuance of a dual school system in Halifax County or the establishment of a dual system in Scotland Neck it would not withstand challenge under the equal protection clause, but we have concluded that it does not have that effect.

The situation here is that the Act sets up in Halifax County two school systems, one with a 50:43 white to black ratio and the other with a 19:80 white to black ratio, in place of one school system with a 22:77 white to black ratio. Thus, the Act constructs a dual school system in Halifax County by the simple expedient of labeling the two sets of schools as separate districts. The majority does not explain

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<sup>10</sup> Judge Winter properly emphasizes in his separate opinion that the effect of the new school districts must be measured by comparing "the racial balance in the preexisting unit with that in the new unit sought to be created, and that remaining in the preexisting unit after the new unit's creation." Focusing, as do I, on the 35% increase in the white student population of the new Scotland Neck School District, he quite correctly notes that "[a] more flagrant example of the creation of a white haven; or a more nearly white haven, would be difficult to imagine."

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why the Act can *create* a dual school system in Halifax County if it could not *continue* a dual system there. Nor do they explain why the Act can *establish* a dual school system in Halifax County if it could not *establish* one in Scotland Neck. Obviously no explanation is possible and the legislation severing the Scotland Neck School District fails to meet the test of the equal protection clause.

## II

Even if I accepted the majority's formulation as the proper doctrine to control these cases, which I certainly do not, I think their test is misapplied in *Scotland Neck*. The court accepts at face value the defendants' assertions that local control and increased taxation were the dominant objectives to be fulfilled by the new district, with the ultimate goal of providing quality education to the students of Scotland Neck. The facts plainly are to the contrary and demonstrate that, in projecting the new district, race was the primary consideration. The District Court specifically found that a significant factor in the creation of the new school district was

a desire on the part of the leaders of Scotland Neck to preserve a ratio of black to white students in the schools of Scotland Neck that would be acceptable to white parents and thereby prevent the flight of white students to the increasingly popular all-white private schools in the area.

*United States v. Halifax County Board of Education*, 314 F. Supp. 65, 72 (E.D.N.C. 1970). The defendants do not contest this finding.<sup>11</sup>

<sup>11</sup> The defendants assert instead that the prevention of white flight is a legitimate goal. However, the Supreme Court in

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What starkly exposes the true purpose impelling the redistricting adventure and belies the professions of lofty objectives is the transfer plan initially adopted by the Scotland Neck City Board of Education." Under that plan, parents residing within Halifax County but outside the newly fashioned district could place their children in the Scotland Neck Schools by paying a fee ranging from \$100 to \$125. The use of transfer plans of this nature as devices to thwart the mandate of *Brown v. Board of Education, supra*, has not been uncommon," and the majority here has no difficulty in recognizing that the Scotland Neck transfer plan was a contrivance to perpetuate segregation. Initial applications for transfer under the plan were received from 350 white and only 10 black children in Halifax County. The net result would have been a racial mix of 74% white, 26% black in the Scotland Neck School District, contrasting with 82% black, 17% white, 1% Indian, in the rest of Halifax County.

*Monroe v. Board of Commissioners*, 391 U.S. 450, 459 (1968), has directly addressed itself to this argument, and rejected it out of hand: "We are frankly told in the Brief that without the transfer option it is apprehended that white students will flee the school system altogether. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Brown II*, at 300.

See also *Brunson v. Board of Trustees of School District No. 1 of Clarendon County*, 429 F. 2d 820 (4th Cir. 1970); *Anthony v. Marshal County Board of Education*, 409 F. 2d 1287 (5th Cir. 1969). The defendants' candid admission serves only to emphasize the dominant racial considerations behind the whole scheme.

"Although the School Board later abandoned the transfer plan, its initial adoption nevertheless reflects the Board's intentions.

"See *Monroe v. Board of Commissioners*, 391 U.S. 450 (1968); *Gross v. Board of Education*, 373 U.S. 683 (1963).

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Thus the transfer plan would have operated directly contrary to the obligation to desegregate the schools of Halifax County and distinctly evidences the design of the Scotland Neck School Board to bring into existence a white haven.

Curiously enough, despite its condemnation of the transfer plan, the court declares the plan not relevant in assessing the intent of the North Carolina legislature in enacting Chapter 31, since there is no evidence in the record to show that the legislative body knew a transfer plan would be effected. This reasoning is fallacious for legislators are not so naive and, in any event, are chargeable with the same motivations as the local communities concerned. The relevant inquiry under the majority's test is into the purposes for which state action was taken and, as Judge Winter observes in his separate opinion, when dealing with statutes designed to affect local communities, one must look to the localities to determine the purposes prompting the legislation."

The size of the new school district in Scotland Neck is also a crucial factor to be taken into account in judging the genuineness of the alleged goal of quality education. The Report of the Governor's Study Commission on the Public School System of North Carolina favors the *consolidation* of school districts to increase efficiency in the operations of the public schools,

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"Moreover, as the District Court noted, local newspapers, including the *Raleigh News and Observer*, suggested that racial considerations, and not a concern for better educational, motivated the legislation. For example, on February 14, 1969, a month before Chapter 31 was enacted, the *Raleigh News and Observer* commented editorially that the bill provided for an "educational island" dominated by whites and on February 22, 1969, suggested that if the bill passed, it would encourage other school districts to resort to similar legislation.



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and suggests 9,000-10,000 as a desirable pupil population, with 3,500 to 4,000 as a minimum. Scotland Neck's minuscule new school district for 695 pupils—one fifth of the suggested minimum—is an anomaly that runs directly counter to the recommendation of the Study Commission that schools be merged into larger administrative units. Moreover, if quality education were the true objective and Scotland Neck residents were deeply concerned with increasing revenue to improve their schools, one might have expected that in-depth consideration would have been given to the financial and educational implications of the new district. However, the District Court found that:

[t]here were no studies made prior to the introduction of the bill with respect to the educational advantages of the new district, and there was no actual planning as to how the supplement would be spent although some people assumed it would be spent on teachers' supplements.

*United States v. Halifax County Board of Education*,  
314 F. Supp. at 74.

Also highly relevant in assessing the dominant purpose is the timing of the legislation splintering the Halifax County school system. During the 1967-68 school year the Halifax County School District maintained racially identifiable schools, and only 46 of the 875 students attending the Scotland Neck school were black. The next school year, under prodding by the Department of Justice, the Halifax County Board of Education assigned to the Scotland Neck school the entire seventh and eighth grades from an adjacent all-black county school, and promised to desegregate completely by 1969-70. A survey by the North Carolina State Department of Education in December 1968 recommended an integration plan which provided that

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690 black and 325 white students should attend the Scotland Neck school. It was only then that the bill which later became Chapter 31 was introduced in the General Assembly of North Carolina in 1969. The fact that the Scotland Neck School District was not formed until the prospects for a unitary school system in Halifax County became imminent leads unmistakably to the conclusion that race was the dominant consideration and that the goal was to achieve a degree of racial apartheid more congenial to the white community.<sup>15</sup>

### III

The court's incongruous holdings in these two cases, reversing the District Court in *Scotland Neck*, while affirming in the twin case, *Littleton-Lake Gaston*, cannot be reconciled. The uncontested statistics presented in *Scotland Neck* speak even louder in terms of race than the comparable figures for *Littleton-Lake Gaston*. The white community in Scotland Neck has sliced out a predominantly white school system from an overwhelmingly black school district. By contrast, the white community in Littleton-Lake Gaston was more restrained, gerrymandering a 46% white, 54% black, school unit from a county school system that was 27% white, 67% black.<sup>16</sup> The majority attempts to escape the inevitable implications of these statistics by attributing to the North Carolina legislature, which severed the Scotland Neck School District on March 3, 1969, benevolent motivation and obliviousness to the

<sup>15</sup> It is also noteworthy that while the Scotland Neck community claims that it had not been accorded a fair allocation of county school funds over a period of years, this apparently became intolerable only when the Department of Justice exerted pressure for immediate action to effectuate integration.

<sup>16</sup> Six percent of the pupils in Warren County are Indian.

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racial objectives of the local white community. Yet the majority unhesitatingly finds a discriminatory purpose in the similar excision of the new Littleton-Lake Gaston School District by the same legislators only one month later, on April 11, 1969. The earlier statute no less than the later provided a refuge for white students and maximized preservation of segregated schools. The record and the District Court's opinion in *Scotland Neck*, no less than the record and the opinion in *Littleton-Lake Gaston*, are replete with evidence of discriminatory motivations. On their facts the two cases are as alike as two peas in a pod.

Judge Bryan soundly recognizes the discordance in the two holdings of the majority. The resolution he proposes is to reverse in both cases. This would indeed cure the inconformity, but at the cost of compounding the error. The correction called for lies in the opposite direction—affirmance in both cases.

## IV

If, as the majority directs, federal courts in this circuit are to speculate about the interplay and the relative influence of divers motives in the molding of separate school districts out of an existing district, they will be trapped in a quagmire of litigation. The doctrine formulated by the court is ill-conceived, and surely will impede and frustrate prospects for successful desegregation. Whites in counties heavily populated by blacks will be encouraged to set up, under one guise or another, independent school districts in areas that are or can be made predominantly white.

It is simply no answer to a charge of racial discrimination to say that it is designed to achieve "quality education." Where the effect of a new school district is to create a sanctuary for white students, for which

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no compelling and overriding justification can be offered, the courts should perform their constitutional duty and enjoin the plan, notwithstanding professed benign objectives.

Racial peace and the good order and stability of our society may depend more than some realize on a convincing demonstration by our courts that true equality and nothing less is precisely what we mean by our proclaimed ideal of "the equal protection of the laws." The palpable evasions portrayed in this series of cases should be firmly condemned and enjoined. Such examples of racial inequities do not go unheeded by the adversely affected group. They are noted and resented. The humiliations inflicted by such cynical maneuvers feed the fires of hostility and aggravate the problem of maintaining peaceful race relations in the land. In this connection it is timely to bear in mind the admonition of the elder Mr. Justice Harlan, dissenting in *Plessy v. Ferguson*, 163 U.S. 537, 560 (1896):

The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law.

I dissent from the reversal in Nos. 14929 and 14930, *United States v. Scotland Neck City Board of Education*, — F. 2d — (4th Cir. 1971), and concur in the affirmance in No. 14990, *Turner v. Littleton-Lake Gaston School District*, — F. 2d — (4th Cir. 1971).

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ALBERT V. BRYAN, *Circuit Judge*, dissenting:  
For me there is here no warrant for a decision different from the *Scotland Neck* and *Emporia* deter-



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minations. This conclusion derives from the majority's exposition of the fact parallel of these cases with the circumstances of *Littleton-Lake Gaston*. The identicalness irresistibly argues a like disposition—reversal of the judgment on appeal.

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WINTER, *Circuit Judge*, dissenting and concurring specially: I dissent from the majority's opinion and conclusion in No. 14,552, *Wright v. Council of City of Emporia*, — F. 2d — (4 Cir. 1971), and in Nos. 14929 and 14930, *United States v. Scotland Neck City Board of Education*, — F. 2d — (4 Cir. 1971). I concur in the judgment in No. 14990, *Turner v. Littleton-Lake Gaston School District*, — F. 2d — (4 Cir. 1971), and I can accept much of what is said in the majority's opinion. There is, however, a broader basis of decision than that employed by the majority on which I would prefer to rest.

Because the majority makes the decision in *Emporia* the basis of decision in *Scotland Neck* and distinguishes them from *Littleton-Lake Gaston*, I will discuss the cases in that order. I would conclude that the cases are indistinguishable, as does my Brother Bryan, although I would also conclude that each was decided correctly by the district court and that in each we should enjoin the carving out of a new school district because it is simply another device to blunt and to escape the ultimate reach of *Brown v. Board of Education*, 347 U.S. 483 (1954), and subsequent cases.

## I

While the legal problem presented by these cases is a novel one in this circuit, I think the applicable legal standard is found in the opinion of the Supreme Court in *Green v. County School Board of New Kent*



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County, 391 U.S. 430 (1968). In rejecting a "freedom of choice" plan under the circumstances presented there, the Court articulated the duties of both a school board and a district court in implementing the mandate of *Brown*:

The burden on a school board today is to come forward with a plan that promises realistically to work, and *promises realistically to work now*.

\* \* \* \* \*

Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system "*at the earliest possible date*," then the plan may be said to provide effective relief. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; *and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method*. [emphasis added.]

391 U.S. at 439.

In each of the instant cases, following a protracted period of litigation, a plan designed finally to institute a unitary school system was jeopardized by the attempt of a portion of the existing school district to break away and establish its own schools. I think the advocates of such a subdivision bear the "heavy burden" of persuasion referred to in *Green* because, as in that case, the dominant feature of these cases is the last-minute proposal of an alternative to an existing and workable integration plan. Factually, these cases are not significantly dissimilar from *Green*. Each act of secession would necessarily require the submission and approval of new integration plans for the newly-created districts, and thus each is tantamount to the proposal of a new plan. And while the act giving rise to the alternative approach here is

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state legislation rather than a proposal of the local school board, the fact remains that the moving force in the passage of each piece of legislation<sup>1</sup> was of local origin. Few who have had legislative experience would deny that local legislation is enacted as a result of local desire and pressure. It is, therefore, to local activities that one must look to determine legislative intent.

Application of the "heavy burden" standard of *Green* to the instant cases is also supported by considerations of policy. In an area in which historically there was a dual system of schools and at best grudging compliance with *Brown*, we cannot be too careful to search out and to quash devices, artifices and techniques furthered to avoid and to postpone full compliance with *Brown*. We must be assiduous in detecting racial bias-masking under the guise of quality education or any other benevolent purpose. Especially must we be alert to ferret out the establishment of a white haven, or a relatively white haven, in an area in which the transition from racially identifiable schools to a unitary system has proceeded slowly and largely unwillingly, where its purpose is at least in part to be a white haven. Once a unitary system has been established and accepted, greater latitude in redefinition of school districts may then be permitted.

Given the application of the *Green* rationale, the remaining task in each of these cases is to discern whether the proposed subdivision will have negative effects on the integration process in each area, and, if so, whether its advocates have borne the "heavy burden" of persuasion imposed by *Green*.

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<sup>1</sup> In *Emporia*, the implementing legislation for the separation already existed; however, the local people alone made the choice to exercise the option which the statute provided.

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## II

## EMPORIA SCHOOL DISTRICT

The City of Emporia, located within the borders of Greensville County, Virginia, became a city of the second class on July 31, 1967, pursuant to a statutory procedure dating back to the 19th Century. While it had the state-created right at that time to establish its own school district, it chose instead to remain within the Greensville County system until June, 1969. It is significant that earlier in this same month, more than a year after it had invalidated a "freedom of choice" plan for the Greensville County system, the district court ordered into effect a "pairing" plan for the county as a further step toward full compliance with *Brown* and its progeny.

The record amply supports the conclusion that the creation of a new school district for the City of Emporia would, in terms of implementing the principles of *Brown*, be "less effective" than the existing "pairing" plan for the county system. In the first place, the delay involved in establishing new plans for the two new districts cannot be minimized in light of the Supreme Court's statement in *Green* that appropriate and effective steps must be taken at once. See also *Carter v. West Feliciana School Board*, 396 U.S. 290 (1970); *Alexander v. Holmes County Bd. of Ed.*, 396 U.S. 19 (1969). Secondly, as the district court found, the separation of Emporia from Greensville County would have a substantial impact on the racial balance both within the county and within the city. Within the entire county, there are 3,759 students in a racial ratio of 34.1% white and 65.9% black. Within the city there are 1,123 students, 48.3% of whom are white and 51.7% are black. If the city is permitted to establish

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its own school system, the racial ratio in the remainder of the county will change to 27.8% white and 72.2% black.<sup>2</sup> To me the crucial element in this shift is not that the 48.3%-51.7% white to black ratio in the town does not constitute the town a white island in an otherwise heavily black county and that a shift of 6% in the percentage of black students remaining in the county is not unacceptably large. Whenever a school area in which racial separation has been a historical fact is subdivided, one must compare the racial balance in the preexisting unit with that in the new unit sought to be created, and that remaining in the preexisting unit after the new unit's creation. A substantial shift in any comparable balances should be cause for deep concern. In this case the white racial percentage in the new unit will increase from 27.8% to 48.3%. To allow the creation of a substantially whiter haven in the midst of a small and heavily black area is a step backward in the integration process.

And finally, the subdivision of the Greenville County school district is "less effective" in terms of the principles of *Brown* because of the adverse psychological effects on the black students in the county which will be occasioned by the secession of a large portion of the more affluent white population from the county schools. If the establishment of an Emporia school district is not enjoined, the black students in

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<sup>2</sup> As part of the establishment of the new system, the Emporia school board proposed a transfer plan whereby Emporia will accept county students upon payment of tuition. The record does not contain any projection of the number of county students who would avail themselves of the plan although in argument counsel was candid in stating that only white parents would be financially able to exercise the option. The transfer plan was quickly abandoned when it became apparent that it might not earn the approval of the district court.

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the county will watch as nearly one-half the total number of white students in the county abandon the county schools for a substantially whiter system. It should not be forgotten that psychological factors, and their resultant effects on educational achievement, were a major consideration in the Supreme Court's opinion in *Brown*.

In my mind, the arguments advanced by the residents of Emporia in support of their secession from the county school system do not sustain the "heavy burden" imposed by *Green*. The essence of their position is that, by establishing their own schools over which they will exercise the controlling influence, they will be able to improve the quality of their children's education. They point to a town commitment to such a goal and, in particular, to a plan to increase educational revenues through increased local taxation. They also indicate that they presently have very little voice in the management of the county school system. Although, as the district court found, the existence of these motives is not to be doubted, I find them insufficient in considering the totality of the circumstances.

While the district court found that educational considerations were a motive for the decision to separate, it also found that "race was a factor in the city's decision to secede." Considering the timing of the decision in relation to the ordering into effect of the "pairing" plan, as well as the initial proposal of a transfer plan, this finding is unassailable. *Green* indicates that the absence of good faith is an important consideration in determining whether to accept a less effective alternative to an existing plan of integration. The lack of good faith is obvious here.

When the educational values which the residents of Emporia hope to achieve are studied, it appears that the secession will have many deleterious consequences.



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As found by the district court, the high school in the city will be of less than optimum size. County pupils will be cut off from exposure to a more urban society. The remaining county system will be deprived of leadership ability formerly derived from the city. It will suffer from loss of the city's financial support, and it may lose teachers who reside in the city. To me, these consequences, coupled with the existence of the racial motive, more than offset the arguments advanced by the residents of Emporia. The separation, with its negative effects on the implementation of the principles of *Brown*, should be enjoined.

### III

#### SCOTLAND NECK SCHOOL DISTRICT

As the majority's opinion recites, the history of resistance to school desegregation in the Halifax County school system parallels the history of the attempts on the part of the residents of Scotland Neck to obtain a separate school district. The significant fact is that in spite of otherwise apparently cogent arguments to justify a separate system, the separate system goal was not realized until, as the result of pressure from the United States Department of Justice, the Halifax County Board agreed to transfer the seventh and eighth grade black students from the previously all-black Brawley School, outside the city limits of Scotland Neck, to the Scotland Neck School, previously all-white. Chapter 31 followed thereafter as soon as the North Carolina legislature met. It is significant also that the Halifax County Board reneged on its agreement with the Department of Justice shortly before the enactment of Chapter 31.

The same negative effects on achieving integration which are present in the Emporia secession are present

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here. Although the City of Scotland Neck has already submitted a plan for its school district, delay will result in devising such a plan for the remaining portion of Halifax County. The racial balance figures show that the existing county system has 8,196 (77%) black students, 2,357 (22%) white students, and 102 (1%) Indian students. Within the city system, there would be 399 (57.4%) white and 296 (42.6%) black, while the remaining county system would be comprised of 7,900 (80%) black, 1,958 (19%) white and 102 (1%) Indian. The difference between the percentage of white students within the existing system and the newly-created one for Scotland Neck is thus 35%. A more flagrant example of the creation of a white haven, or a more nearly white haven, would be difficult to imagine. The psychological effects on the black students cannot be overestimated.

The arguments advanced on behalf of Scotland Neck are likewise insufficient to sustain the burden imposed by *Green*. Even if it is conceded that one purpose for the separation was the local desire to improve the educational quality of the Scotland Neck schools, the record supports the conclusion of the district court that race was a major factor. If the basic purpose of Chapter 31 could not be inferred from the correlation of events concerning integration litigation and the attempt to secede, other facts make it transparent. As part of its initial plan to establish a separate system, Scotland Neck proposed to accept transfer students from outside the corporate limits of the city on a tuition basis. Under this transfer system, the racial balance in the Scotland Neck area was 749 (74%) white to 262 (26%) black, and the racial balance in the rest of Halifax County became 7,934 (82%) black, 1,608 (17%) white, and 102

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(1%) Indian.<sup>3</sup> This proposal has not yet been finally abandoned. In oral argument before us, counsel would not tell us forthrightly that this would not be done, but rather, equivocally indicated that the proposal would be revived if we, or the district court, could be persuaded to approve it. I cannot so neatly compartmentalize Chapter 31 and the transfer plan as does the majority, and conclude that one has no relevance to the other. To me, what was proposed, and still may be attempted, by those who provided the motivation for the enactment of Chapter 31 is persuasive evidence of what Chapter 31 was intended to accomplish.

In terms of educational values, the separation of Scotland Neck has serious adverse effects. Because Scotland Neck, within its corporate boundaries, lacked sufficient facilities even to operate a system to accommodate the only 695 pupils to be educated, it purchased a junior high school from Halifax County. This school is located outside of the corporate boundaries of Scotland Neck. The sale deprives the students of Halifax County, outside of Scotland Neck of a school facility. The record contains abundant, persuasive evidence that the best educational policy and the nearly unanimous opinion of professional educa-

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<sup>3</sup> There is apparent error in the computations made by the district court in this regard. The district court found that the net effect of the transfer plan would be to add 350 white students to the city system. Added to the resident white students (399), the total is 749, not 759 as indicated in the opinion of the district court. The district court's figure of 262 black students in the city under the transfer plan (a net loss of 34) appears correct. But when these two totals are subtracted from the figures given for the existing county system in 1968-1969 (2,357 white, 8,196 black and 102 Indian), the effects on the county are as shown above.

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tors runs contrary to the creation of a small, separate school district for Scotland Neck. A study by the State of North Carolina indicates that a minimally acceptable district has 3,500-4,000 pupils.

On the facts I cannot find the citizens of Scotland Neck motivated by the benign purpose of providing additional funds for their schools; patently they seek to blunt the mandate of *Brown*. Even if additional financial support for schools was a substantial motive, the short answer is that a community should not be permitted to buy its way out of *Brown*. Here again, the "heavy burden" imposed by *Green* has not been sustained.

## IV

## LITTLETON-LAKE GASTON SCHOOL DISTRICT

The majority's opinion correctly and adequately discloses the legislative response to court-ordered compliance with *Brown* and its progeny. That response was the creation of the Warrenton City School District and the Littleton-Lake Gaston School District. The overall effect of the creation of the Littleton-Lake Gaston district, the proposed tuition transfer plan, and the creation of the Warrenton City district (an act enjoined by the district court and not before us) would be to permit more than 4 out of 5 white students to escape the heavily black schools of Warren County. Even without the transfer plan, the racial balance in the Littleton-Lake Gaston district would show nearly 20% more white students than in the existing Warren County unit. To permit the subdivision would be to condone a devastating blow to the progress of school integration in this area.

Despite the assertion of the benign motives of remedying long-standing financial inequities and the

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preservation of local schools, I agree with the majority that the "primary" purpose and effect of the legislation creating the Littleton-Lake Gaston school district was to carve out a refuge for white students and to preserve to the fullest possible extent segregated schools. Aside from questions of motivation, the record shows that the new district was established to accommodate a total of only 659 students, despite state policy to the contrary and expert opinion that its small size rendered it educationally not feasible. And, as the majority indicates, there is no evidence that the residents of the Littleton area have been deprived of their proportionate voice in the operation of the schools of Warren County. In short, there is a complete absence of persuasive argument in favor of the creation of the new district.

While I agree that the injunction should stand, I disagree that injunctive relief should be granted only when racial motivation was the "primary" motive for the creation of the new district. Consistent with *Green*, we should adopt the test urged by the government in *Scotland Neck*, i.e., to view the results of the severance as if it were a part of a desegregation plan for the original system—that is, to determine whether the establishment of a new district would, in some way, have an adverse impact on the desegregation of the overall system. By this test the injunction would stand in the *Littleton-Lake Gaston* case, as well as in each of the two other cases, because in each of the three there is at least some racial motivation for the separation and some not insubstantial alteration of racial ratios, some inherent delay in achieving an immediate unitary system in all of the component parts, and an absence of compelling justification for what is sought to be accomplished.



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**BUTZNER, Circuit Judge:** This appeal involves the same case in which I decided questions concerning the school board's compliance with the Fourteenth Amendment when I served on the district court.\* While the details differ, the same basic issues remain—the validity of measures taken to disestablish a dual school system, to create a unitary system, and to assign pupils and faculty to achieve these ends.

Title 28 U.S.C. § 47 provides: "No judge shall hear or determine an appeal from the decision of a case or issue tried by him."

Recently, Judge Craven carefully examined this statute and the cases and authorities which cast light on it. He concluded that he should not sit on an appeal of a case in which he had participated as a district judge when the ultimate questions were the same: "what may a school board be compelled to do to dismantle a dual system and implement a unitary one, or how much school board action is enough?" See *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 431 F. 2d 135, (4th Cir. 1970). Following the sound precedent established by Judge Craven, I believe that I must disqualify myself from participating in this appeal.

\* See *Wright v. County School Bd. of Greensville County, Va.*, 252 F. Supp. 378 (E.D. Va. 1966). Two other opinions were not published.

**Judgment****UNITED STATES COURT OF APPEALS****FOR THE FOURTH CIRCUIT****No. 14,552****PECOLA ANNETTE WRIGHT, et al.,***Appellees,***v.****COUNCIL OF THE CITY OF EMPORIA AND THE MEMBERS THEREOF,  
AND SCHOOL BOARD OF THE CITY OF EMPORIA AND THE  
MEMBERS THEREOF,***Appellants.*

Appeal from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court the the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed; and the case is remanded to the United States District Court for the Eastern District of Virginia, at Richmond, with instructions to dissolve the injunction; and because of the possibility that Emporia might institute a plan for transferring students into the city system from the county system resulting in resegregation, or that the hiring of teachers to serve the Emporia school system might result in segregated faculties, the district court is directed to retain jurisdiction.

/s/ SAMUEL W. PHILLIPS

Clerk



Supreme Court of the United States

No. 70-188 ---, October Term, 1971.

Pecola Annette Wright,  
et al.,

Petitioners,

v.

Council of the City of  
Emporia, et al.

ORDER ALLOWING CERTIORARI. Filed October 12, 1971.

The petition herein for a writ of certiorari to the United States Court of

Appeals for the Fourth Circuit is granted.